

# THE COURTS

## Title 255—LOCAL COURT RULES

### ERIE COUNTY

#### In the Matter of the Revision and Restatement of the Erie County Orphans' Court Rules; Orphans' Court Division

##### Motion

*And Now*, this 17th day of February 2009, comes the Orphans' Court Rules Committee of the Erie County Bar Association, by and through its Chairperson, Raymond A. Pagliari, Esq., and hereby moves this Honorable Court to approve, adopt and promulgate the attached proposed and recommended revisions and amendments to the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania.

Respectfully Submitted,

RAYMOND A. PAGLIARI Jr., ESQ.,  
*Chairperson*

##### Order

*And Now*, this 18 day of February, 2009, upon consideration of the foregoing Motion, it is hereby *Ordered, Adjudged and Decreed*, that the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania are hereby Amended and Revised in accordance with the annexed Motion.

Amended Rules are: Rules 3.4.1(e), 3.4.1(h)(2), 5.1.1, 5.2.1(a), 5.2.1(b), 5.4.1(a), 5.6.1, 6.1.4, 6.1.5, 6.2.2(c), 6.3.1, 6.4.2, 6.4.3, 6.6.1, 6.6.2, 6.9.1, 6.9.3, 6.9.4, 6.10.1(a), 6.10.1(e), 6.10.1(f), 6.10.1(h), 6.11.1, 7.1.2(b), 7.1.2(c), 7.1.3, 7.1.4(c), 7.1.5(c), 10, 10.2.1, 10.2.2, 10.2.3, 10.2.4, 10.2.5, 10.2.6, 12.0.1(a)(6), 12.0.1(b)(3), 12.1.1(c), 12.5.5(e), 12.9.1(a)(6), 12.9.1(b)(4), 12.9.1(c)(6), 12.9.3(a), 12.9.3(b), 12.10.1, 13.3.1 footnote # changed to 3, 14.1.1(a), 14.2.1(c), 14.2.1(d)(1) and 15.5.1.

Deleted Rules are: Rules 5.2.1(c), 5.2.1(d), 6.1.1(a) footnote 3, 10.2.7, 10.2.8, 10.2.9 and 10.2.10.

New Rules are: Rules 5.1.2, 10.1, 10.1.2, 10.1.3, 10.1.4, 10.1.5, 10.2, 10.3, 10.3.1, 10.3.2, 10.3.3, 10.4, 10.4.1, 10.4.2, 10.4.3, 10.5, 10.5.1, 10.5.2, 10.5.3, 10.5.4, 10.6, 10.6.1, 10.6.2, 10.7, 10.7.1, 10.7.2, 10.8, 10.8.1, 10.8.2, 10.8.3, 10.8.4 and Administrative Order.

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

ELIZABETH K. KELLY,  
*President Judge*

#### TABLE OF CONTENTS

##### RULE 1 JUDGES—LOCAL RULES

- 1.2.1 The Business of the Court.
- 1.2.2 Argument.
- 1.2.3 Attorneys.
- 1.2.4 Sureties. Individual—Corporate.
- 1.2.5 Certificates of Appointments. Fiduciaries.
- 1.2.6 Individual Fiduciaries. Assets and Investments.
- 1.2.7 Corporate Fiduciaries. Approval. Security.
- 1.2.8 Release of Fiduciary and Surety.
- 1.2.9 Trusts Inter Vivos.
- 1.2.10 Legal Periodical.
- 1.2.11 Return Days.

##### RULE 2 CONSTRUCTION AND APPLICATION OF RULES

- 2.3.1 Definitions.

##### RULE 3 PLEADINGS AND PRACTICE

- 3.2.1 Pleadings.
- 3.2.2 Disposition of Pleadings.
- 3.4.1 Form. Additional Requirements.
- 3.5.1 Service of Copies of Pleadings.
- 3.6.1 Depositions, Discovery and Production of Documents.
- 3.6.2 Perpetuation of Testimony.
- 3.7.1 Pre-trial Conference.

##### RULE 5 NOTICE

- 5.1.1 Method of Serving Notice. Public Sale of Real Property. Return of Sale.
- 5.1.2 Petition for Approval or Confirmation of Public Sale.
- 5.2.1 Method of Serving Notice. Person under Incapacity With No Fiduciary.
- 5.2.2 Method of Serving Notice. Presumed Decedents and Unascertained Persons.
- 5.4.1 Return of Notice. Additional Requirements.
- 5.4.2 Return of Notice. Return of Public Sale for Approval or Confirmation.
- 5.6.1 Legatees, Devisees, Beneficiaries of Dispositive Instruments Notice to Named Individuals.

##### RULE 6 ACCOUNTS AND DISTRIBUTIONS

- 6.1.1 Accounts. Form. Additional Requirements.
- 6.1.2 Reporting Requirements for Sales and Purchases Between Estate and Accountant.
- 6.1.3 Execution and Verification of Account.
- 6.1.4 Receipts for Disbursements.
- 6.1.5 Small Estates.
- 6.2.2 Accounts of Guardians of the Estates of Minors.
- 6.3.1 Notice to Parties in Interest.
- 6.4.1 Filing for a Particular Audit.
- 6.4.2 Date of Audit. Postponement or Adjournment. Method of Audit.
- 6.4.3 Attendance at Audit not Required.
- 6.6.1 Advertisement of Accounts, Audit Statements, and Petitions for Adjudication.
- 6.6.2 Filing.
- 6.9.1 Audit Statement and Petition for Adjudication.
- 6.9.2 Unknown or Non-Resident Distributees. Report by Fiduciary.
- 6.9.3 Contents of Report.
- 6.9.4 Additional Receipts and Disbursements.
- 6.10.1 Objections to Account, Audit Statement or Statement of Proposed Distribution. Form, Notice and Time.
- 6.11.1 The Schedule of Distribution: In General. Real Property.
- 6.11.2 Determination of Title to Real Property. § 3546 PEF Code.

##### RULE 7 EXCEPTIONS

- 7.1.1 Filing of Exceptions.
- 7.1.2 Finality of Certain Orders, Decrees and Adjudications.
- 7.1.3 Finality of Other Orders and Decrees.
- 7.1.4 Effect of Exceptions Upon Decree Nisi.
- 7.1.5 Exceptions to Orders and Decrees.
- 7.1.6 Effect of Exceptions on Adjudications, Orders and Decrees.
- 7.1.7 Other Exceptions.

##### RULE 8 AUDITORS AND MASTERS

- 8.1.1 Appointment.
- 8.1.2 Manner and to Whom Notice is Given.
- 8.6.1 Notice of Intention to File. Exceptions.
- 8.7.1 Exceptions Before the Court.
- 8.8.1 Filing of Security With Clerk.
- 8.8.2 Compensation of Auditor or Master.

##### RULE 9 OFFICIAL EXAMINERS

- 9.1.1 Examiners—Appointment and Ordinary Duties.
- 9.1.2 Examiners—Special Duties.
- 9.1.3 Examiners—Compensation.

##### RULE 10 MATTERS BEFORE THE REGISTER OF WILLS

- 10.1 Application and Construction of Register of Wills Rules.
- 10.1.2 Application of Rules.
- 10.1.3 Construction of Rules.
- 10.1.4 Filing of Death Certificate—Estates.
- 10.1.5 Extension of Time Limitation.
- 10.2 Pleadings and Practice before the Register.
- 10.2.1 Pleading and Practice.
- 10.2.2 Jurisdiction of the Register.
- 10.2.3 Presiding Officer.
- 10.2.4 Evidence.
- 10.2.5 Stenographic Record.
- 10.2.6 Objections to Evidence.
- 10.3 Discovery Before the Register.
- 10.3.1 Limitations on Discovery.
- 10.3.2 Objections to Discovery.

- 10.3.3 Additional Discovery.
- 10.4 Caveat Practice and Procedure.
- 10.4.1 Form of Caveat.
- 10.4.2 Bond and Form of Bond.
- 10.4.3 Time for Fixing the Amount of Bond.
- 10.5 Citation Practice and Procedure.
- 10.5.1 Request for Citation.
- 10.5.2 Form of Citation.
- 10.5.3 Person Responsible for Service of Citation.
- 10.5.4 Method of Service of Citation.
- 10.6 Notice.
- 10.6.1 Distribution of Pennsylvania Orphans' Court Rule 5.6 and Rule 6.12 Notices.
- 10.6.2 Manner of Proceeding.
- 10.7 Conclusion of Hearing and Decree of Register.
- 10.7.1 Procedure Before the Register Upon Conclusion of the Receipt of Testimony.
- 10.7.2 Decision of the Register.
- 10.8 Appeals from Decision of Register.
- 10.8.1 Right of Appeal.
- 10.8.2 Procedure for Appeal from Decisions of the Register of Wills.
- 10.8.3 Decree of Orphans' Court upon Sustaining Appeal.
- 10.8.4 Decree of Orphans' Court upon Dismissing Appeal.

**RULE 12 SPECIAL PETITIONS**

- 12.0.1 Settlement of Small Estates.
- 12.1.1 Family Exemption. Additional Requirements.
- 12.5.1 Minor's Estate. Appearance Before the Court. Minor over Fourteen.
- 12.5.2 Minor's Estate. Restricted Account.
- 12.5.3 Minor's Estate Not Exceeding Amount Established by PEF Code.
- 12.5.4 Minor's Estate. Allowance.
- 12.5.5 Minors and Incapacitated Persons; Settlement, Compromise or Discontinuance.
- 12.6.1 Appointment of Trustee. Exhibits.
- 12.6.2 Appointment of Successor Co-Trustee.
- 12.7.1 Discharge of Personal Representative Section § 3531—PEF Code.
- 12.9.1 Public Sale. Contents of Petition. Additional Requirements.
- 12.9.2 Public Sale. Exhibits.
- 12.9.3 Public Sale of Real Property. Notice. Confirmation.
- 12.9.4 Public Sale. Security.
- 12.10.1 Private Sale. Contents of Petition. Additional Requirements.
- 12.10.2 Private Sale. Exhibits.
- 12.10.3 Private Sale. Higher Offer.
- 12.10.4 Private Sale. Security.
- 12.10.5 Petition to Fix or Waive Additional Security. Personal Representatives.
- 12.11.1 Mortgage of Real Property. Additional Requirements.
- 12.12.1 Inalienable Property.
- 12.12.2 Inalienable Property. Notice. Discretion of Court.
- 12.12.3 Inalienable Property. Real Estate or Fiduciaries in Other Counties.

**RULE 13 DISTRIBUTION—SPECIAL SITUATIONS**

- 13.3.1 Unknown Distributee. Contents of Report.

**RULE 14 INCAPACITATED PERSONS**

- 14.1.1 Procedure.
- 14.2.1 General Practice and Procedure.
- 14.2.3 Proof of Service.
- 14.2.4 Emergency Guardianships.
- 14.2.5 Post Adjudication Duties.
- 14.2.6 Modification of Guardianship.
- 14.3.1 Adjudication of Capacity.

**RULE 15 ADOPTION**

- 15.1.1 Procedure.
- 15.4.1 Involuntary Termination of the Parental Rights of a Putative Father Whose Identity Or Whereabouts Cannot be Ascertained.
- 15.4.2 Petition to Terminate Putative Father's Rights Under § 2503(d) and § 2504(c).
- 15.5.1 Petition to Confirm Consent to Adoption, including Stepparent adoptions.

**ADMINISTRATIVE ORDERS**

Inspection of Gestational Carrier Files . . . . . Pg. 62

**RULE 1**

**JUDGES—LOCAL RULES**

**1.2.1 The Business of the Court.**

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

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

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

**1.2.2 Argument.**

Cases requiring argument are heard at a time fixed by the Court.

**1.2.3 Attorneys.**

(a) *Attorney as Surety.* An attorney shall act as surety only by special Order.

(b) *Notice to Counsel.* Notice by or to attorneys shall be in writing, given to the attorney of record or to an employee of his office, and shall be considered notice to the party represented unless personal notice to the party is required.

(c) *Removal of Records.* No records shall be removed from the office of the Clerk without a written Order of Court. The Clerk shall report to the Court any failure to comply with the Order.

(d) *Appearance.* Any attorney representing a party in any proceeding in the Orphans' Court Division shall enter a written appearance with the clerk of the Orphans' Court which shall state the attorney's Pennsylvania Supreme Court Identification Number and an address within the Commonwealth at which papers may be served. Written notice of entry of appearance shall be given forthwith to all parties.

**1.2.4 Sureties. Individual—Corporate.**

(a) *Individual Sureties.* Individuals proposed as sureties on bonds of fiduciaries shall file affidavits on the printed forms supplied by the Clerk. The affidavits and bond shall be filed for approval.

(b) *Bond Without Surety.* The Court may permit a party in interest to execute an individual bond, without surety upon such conditions as the Court requires.

(c) *Corporate Sureties.* Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in the Orphans' Court; provided, that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, is filed of record.

(d) *Duty of fiduciary.* It is the duty of the fiduciary to determine that its surety remains responsible and that any bond remains continuously in effect.

**1.2.5 Certificates of Appointments. Fiduciaries.**

The Clerk shall not issue a certificate of appointment of any fiduciary until the security, if any, ordered by the Court, has been filed, approved and entered.

**1.2.6 Individual Fiduciaries. Assets and Investments.**

(a) *Segregation and Designation of Assets.* Assets subject to the jurisdiction of the Court and held by individual fiduciaries shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such unless they are left in the name of the decedent, the incapacitated person, or the minor.

(b) *Small estates.* Where the cash assets of an estate are \$1,000.00, or less, the fiduciary may deposit such cash in the attorney's trustee account.

(c) *Deposit of Uninvested Funds.* All funds held uninvested shall be deposited in financial institutions, the deposit of which are insured by a Federal governmental insurance agency, in such manner as to guarantee that all such funds are fully insured, unless otherwise authorized by the Court.

### 1.2.7 Corporate Fiduciaries. Approval. Security.

(a) *In General.* Corporations having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court; provided that a current certificate evidencing the approval of the State Banking Department, or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers, is on file with the Clerk.

(b) *Period of Approval.* The approval granted by the Court under subparagraph (a) of this Rule shall be for a period of one year and thereafter annually, subject; however, to compliance by the corporation with these Rules and with such other rules and regulations governing approval of continuance as the Court will, from time to time, promulgate.

(c) *Security.* A bond will not be required of an approved corporate fiduciary except when required by statute or for special cause shown.

### 1.2.8 Release of Fiduciary and Surety.

No fiduciary, bonding company or corporation that files its own bond, or individuals who become sureties on bonds, will be released from their liabilities on the bond until all of the requirements relative to the administration of the estate have been fulfilled. Any surety may be substituted by special Order of Court, but the old surety shall only be released after filing and confirmation of an account, unless excused from doing so by Order of Court.

### 1.2.9 Trusts Inter Vivos.

The Rules of Court applicable to testamentary trusts shall apply to trusts inter vivos.

### 1.2.10 Legal Periodical.

The *Erie County Legal Journal* is the legal periodical for the publication of legal notices in Erie County.

### 1.2.11 Return Days.

Return days shall be on such day as may be fixed by Order of Court unless otherwise provided by statute or Rule of the Supreme Court.

## RULE 2

### CONSTRUCTION AND APPLICATION OF RULES

#### 2.3.1 Definitions.

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

(a) "Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Court House is closed.

(b) "Common Pleas" means the Court of Common Pleas of Erie County.

(c) "Exceptions" shall mean written objections to a ruling of the Court.

(d) "Local Rule" shall mean the Erie County Orphans' Court Rules.

(e) "Objections" shall mean written objections to actions of a fiduciary.

(f) "PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code as found in 20 Pa.C.S.A. § 101, et seq., as shall be amended from time to time.

(g) "State Rule" shall mean the Pennsylvania Supreme Court Orphans' Court Rules.

## RULE 3

### PLEADINGS AND PRACTICE

#### 3.2.1 Pleadings.

The Pleadings in matters before the Orphans' Court are limited to a petition, (including a petition for a citation or for declaratory relief), an answer (which may include new matter), a reply, preliminary objections and an answer to preliminary objections.

(a) *New Matter.* Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter."

(b) *Reply.* A reply shall be required when New Matter is set forth in the answer.

(c) *Preliminary Objections.*

(1) Preliminary objections are available to any party, but shall be limited to questions of:

- (A) law;
- (B) form; or
- (C) jurisdiction.

(2) An answer to preliminary objections is limited to the averments of fact concerning jurisdiction set forth in the preliminary objections.

#### 3.2.2 Disposition of Pleadings.

(a) *Failure to Answer.* If the respondent fails to file a timely answer, all averments of fact within the petition may be deemed by the Court to have been admitted.

(b) *Failure to Reply.* If the petitioner fails to file a reply to an answer which contains new matter, the averments of fact set forth under the new matter may be deemed admitted and the case will be at issue.

(c) *Failure to File an Answer to Preliminary Objections.* If the petitioner fails to file an answer to preliminary objections raising questions of jurisdiction, the averments of fact set forth in the preliminary objections may be deemed admitted and the case will be at issue on the preliminary objections.

#### 3.4.1 Form. Additional Requirements.

(a) *Typing. Endorsements.* Every pleading shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number of counsel and, where practicable, typewritten and double-spaced or printed.

(b) *Notice to Plead.* Every pleading to which a response is required shall have endorsed thereon, or included therein as the first page thereof, in a conspicuous place, a notice to defend and notice to plead addressed specifically to each party from whom a response is required. The form as required by RCP 1018.1 and RCP 1361 (as said Rules may be in force or hereafter amended) shall be used.

(c) *Signature and Verification.* All pleadings shall be signed by the attorney and verified by at least one of the

parties involved. If this is impracticable, they may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to do so shall be set forth.

(d) *Decree*. Every proposed decree shall bear the caption of the case and shall be attached to the petition.

(e) *Consents*. The petition shall recite that all necessary consents are attached or shall set forth the names of the persons who do not consent. In all cases where a consent is not attached, in order to obtain personal jurisdiction over a non-consenting person, a citation shall be issued and served upon the person(s) who do not consent. See Pa. State Orphans Court Rule 3.5.

(f) *Paper Size*. No paper or other document may be filed in the Register of Wills or Clerk of Orphans' Court Division other than paper 8 1/2" by 11" in size. The only exception to this Rule is the filing of a Will.

(g) *Cover Sheet*. All motions presented at motion Court shall include a completed motion Court cover sheet in the form required by the Court.

(h) *Notice Requirements Prior to Presentation at Motion Court*.<sup>1</sup> Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

(1) *Contents of Notice*. The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion and Order.

(2) *Certification of Notice*. The motion or petition must contain a certificate signed by counsel verifying that proper notice or citation was given under this Rule.

(3) *Length of notice required*. Except where otherwise required under the Local Rules, the following notice shall be required:

(A) Two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office, **or**

(B) Five (5) full business days' notice must be given if notice is by mail.

(4) *Failure to give notice*. The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause is shown to the Court.

### 3.5.1 Service of Copies of Pleadings.

(a) *Pleadings*. A copy of every pleading filed in a case shall be promptly served upon counsel of record for all parties in interest; or, in the absence of counsel, upon the parties themselves.

(b) *Briefs*. All briefs shall be filed directly with the Clerk of the Court, with copies to the Judge and to all parties of record or their counsel of record.

### 3.6.1 Depositions, Discovery and Production of Documents.

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court.

(a) Leave to take depositions and/or to obtain discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.

(b) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.

### 3.6.2 Perpetuation of Testimony.

The procedure relating to perpetuation of testimony shall be governed by special Order of Court in every case.

### 3.7.1 Pre-trial Conference.

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

(a) The simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining admissions or stipulations of fact and documents which will avoid unnecessary proof;

(d) The limitation of the number of expert witnesses; and

(e) Such other matters as may aid in the disposition of the action.

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

## RULE 5

### NOTICE

#### 5.1.1 Method of Serving Notice. Public Sale of Real Property.

Notice of the public sale of real property (containing the date, time and place of sale and any other information required by Act of Assembly) shall be given:

(a) By advertisement once a week for three successive weeks in the *Erie County Legal Journal* and at least in one newspaper of general circulation in Erie County; and

(b) (1) By handbills, one of which shall be posted at a conspicuous place on the real property to be sold, and at least three of which shall be posted in three public places in the vicinity of such real property; and

(2) By personal notice, sent via registered or certified mail, to all parties in interest, of the time and place of the proposed sale, at least ten days prior to the time set for the sale of the property.

#### 5.1.2 Petitions for Approval or Confirmation of Public Sale.

Petitions for approval or confirmation by the Court of the public sale of real property shall be verified and shall be set forth:

(a) The notice as given as provided by this Rule; and

(b) The method of sale; and

(c) The price obtained; and

(d) The name and address of the purchaser and an averment that the purchaser was the highest bidder.

#### 5.2.1 Method of Serving Notice. Person under Incapacity With No Fiduciary.

Whenever notice is to be given to a person who is not *sui juris*, for whom there is no guardian or trustee, notice

<sup>1</sup> See also Rule 7 for additional notice.

shall be given by serving it upon said person, if more than fourteen years of age, and, in all cases, upon

(a) Said person's spouse; or if no spouse, then; next of kin; and an adult with whom said person resides or by whom said person is maintained; or the superintendent or other official of the institution having custody of said person; or

(b) In such manner as the Court, by special Order, may direct.

#### **5.2.2 Method of Serving Notice. Presumed Decedents and Unascertained Persons.**

Notice to be given to an absentee, a presumed decedent, or to an unknown or unascertained person, shall be given in the manner provided by Act of Assembly, or, in the absence thereof, in such manner as the Court, by special Order, shall direct.

#### **5.4.1 Return of Notice. Additional Requirements.**

(a) *Copy of Notice to be Attached.* A copy of the notice required to be given by this Rule shall be attached to the petition or return and shall set forth the date the notice was served and method of service.

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

(c) *Registered or Certified Mail.* Return of notice by registered or certified mail shall set forth the date and place of mailing and shall include the return receipt, or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowledge or cause to believe that such notice was not received by the person to be notified, he shall so state in the return. When a person resides in a foreign country, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

(d) *Publication.* Return of notice by publication shall consist of proofs of publication, together with affidavits of publication by the publisher or his agent.

#### **5.4.2 Petitions for Approval or Confirmation of Public Sale.**

Petitions for approval or confirmation by the Court of the public sale of real property shall be verified and shall set forth:

- (a) The notice as given as provided by Rule 5.4.1 (a);
- (b) The price obtained; and

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

#### **5.6.1 Legatees, Devisees and Beneficiaries of Dispositive Instruments. Notice to Named Individuals.**

In every proceeding involving a dispositive instrument requiring the filing of a Pennsylvania Inheritance Tax Return (including, inter alia, wills and inter-vivos trusts), the Fiduciary shall within three (3) months after the probate of the Will, or within six (6) months of the happening of the event giving rise to the disposition of any interest in any property, whichever shall first occur, notify all individuals and entities (and the Attorney General, where required) named in said dispositive instrument of the probate or the happening of the event

giving rise to the disposition of the interest. The notice shall be submitted by regular U.S. Mail and shall include the following:

(a) In the case of a will<sup>2</sup>:

- (1) The name of the decedent and date of death;
- (2) The date that a Will has been probated and the location;
- (3) Notification that the addressee has been named as a legatee or devisee in said will;
- (4) The address where a copy of the will can be acquired, if desired.

(b) In the case of a dispositive instrument other than a will:

- (1) The name of the creator of the property interest;
- (2) The nature of the property interest created;
- (3) Notification that the addressee has been named as a beneficiary in said dispositive instrument and a copy of such instrument or a description of the beneficiary's interest under the terms of the instrument;
- (4) The address where a copy of the dispositive instrument can be acquired, if desired.

### **RULE 6**

#### **ACCOUNTS AND DISTRIBUTIONS**

##### **6.1.1 Accounts. Form. Additional Requirements.**

In addition to the requirements of State Rule 6.1, accounts shall meet the following requirements:

(a) *Form.* Except as herein provided, all accounts shall be in the form approved by the Pennsylvania Supreme Court and known as the Uniform Fiduciary Accounting Standards. Should the account fail to comply with the said accounting standards, the Clerk shall notify the Accountant to immediately comply prior to twenty (20) days before the Audit Day. The corrected account shall be given to all parties in interest. A failure to correct the account shall result in the account being stricken.

(b) *Paper.* Accounts shall be stated on 8 1/2" by 11" paper, fastened together securely at the top and numbered consecutively at the bottom.

(c) *Use of forms provided by Register of Wills.* Accounts may continue to be stated in conformity with and on forms provided by the Register of Wills.

##### **6.1.2 Reporting Requirements for Sales and Purchases Between Estate and Accountant.**

The account shall specifically describe and indicate the amount:

(a) Of the purchase price for all assets which have been purchased from the estate by the accountant, individually, as a fiduciary or in any other capacity; and

(b) Received for all assets sold to the estate which are owned by the accountant, individually, as a fiduciary or in any other capacity.

##### **6.1.3 Execution and Verification of Account.**

Every account filed with the Register or Clerk shall be signed by each accountant, unless special leave of Court is obtained, and shall be verified by at least one accountant. It must be sworn or affirmed:

(a) That the disbursements claimed have been made to the parties entitled thereto;

<sup>2</sup>The form provided by the Register of Wills at the time of Appointment of a Personal Representative may be used to meet the requirements of this section.

- (b) That the account as stated is true and correct;
- (c) That notice has been given to each unpaid creditor, whether or not payment is contested;
- (d) In a decedent's estate, that four months have elapsed from the date of the first complete advertisement of the original grant of letters, unless the accountant has been directed by the Court to file an account prior to that time.

#### 6.1.4 Receipts for Disbursements.

(a) Fiduciaries shall not be required to file receipts with the Account, unless a written request is made for a receipt by an objecting party, as provided for in party (c) of this rule.

(b) All receipts or other tangible proof of payment shall be retained by the fiduciary.

(c) In the event an objection to the Account is filed, and upon the written request of the objecting party, a receipt or other tangible proof of payment shall be delivered to the objecting party, and a certificate of delivery shall be filed with the Register of Wills.

#### 6.1.5 Small Estates.

Where an estate does not exceed in value the amount fixed by the PEF Code as a small estate, an account may be filed and confirmed in accordance with the applicable Statutory authority. Petitions for the Settlement of Small Estates must conform to the PEF Code and Local Rule 12.0.1.

#### 6.2.2 Accounts of Guardians of the Estates of Minors.

The guardian of the estate of a minor shall submit to the Court with the audit statement and account:

- (a) A statement of the manner and date of appointment of the guardian;
- (b) A statement that notice of the audit has been given to all known, unpaid claimants; and
- (c) If a final account because the minor has attained majority, is deceased, or has been adjudged an incapacitated person, a Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa.O.C. Rules 6.9, in the manner set forth in Form OC—04 of the Pennsylvania Orphans' Court Rules.

#### 6.3.1 Notice to Parties in Interest.

No account shall be confirmed unless the accountant has mailed or given to the attorney of record of or to every unpaid claimant who has given written notice of his claim to the accountant and every other person known to the accountant to have or claim an interest in the estate as a creditor, beneficiary, heir, or next of kin, except where a specific legatee has been paid in full, a written copy of the complete account and written notice of the filing thereof in accordance with Local Rule 7.1.2(b).

#### 6.4.1 Filing for a Particular Audit.

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

#### 6.4.2 Postponement or Adjournment and Method of Audit.

Audits may be postponed or adjourned at the discretion of the Auditing Judge. Accounts shall be audited by the Auditing Judge, who shall give written notice to the accountant or the accountant's attorney of record of:

- (a) Any objections and the hearing dates thereon;
- (b) Any conditions precedent to confirmation of the account;
- (c) Confirmation; and
- (d) Any other matters deemed appropriate by the Court.

#### 6.4.3 Attendance at Audit not Required.

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

**2008 Comment:** The change to Local Rule 6.2.2 is necessitated by the 2006 addition of PA Form OC—04, which is now required under Pa.O.C. Rule 6.9. The information required under the former Local Rule 6.2.2(c) and (d) will be included in PA Form OC—04. The change to Local Rule 6.3.1 reflects the broader and more exhaustive language of Pa.O.C. Rule 6.3, which requires notice to known claimants and those having an interest as creditors (whether a claim has been filed or not), and to beneficiaries, heirs, or next of kin (which are broader in terms that the term "distributee"), even though the accountant may be convinced that they have no valid interest.

#### 6.6.1 Advertisement of Accounts, Audit Statements, and Petition for Adjudication.

The Clerk shall give notice of all accounts, audit statements, and Petitions for Adjudication filed both in the Clerk's Office and in the Office of the Register of Wills and of the time and place of audit by advertising in the legal periodical and in one newspaper of general circulation published in Erie County in accordance with the requirements of the PEF Code Section 745, as may be amended. An account/Petition for Adjudication shall not be audited unless an audit statement or Petition for Adjudication has been filed in timely accordance with the audit calendar published by the Clerk's office. The Clerk's notice shall include the last day on which objections may be filed.

#### 6.6.2 Filing.

Accounts/Petitions for Adjudication received by the Clerk or by the Register and found to violate any provision of these Rules or the State Rules will not be docketed.

#### 6.9.1 Audit Statement and Petition for Adjudication.

(a) The Audit Statement/Petition for Adjudication shall be signed by each Accountant/Petitioner and verified by at least one of them, which Affidavit shall state that a copy of the Statement of Proposed Distribution has been mailed or given to each unpaid creditor and to each distributee or his attorney of record. The Audit Statement/Petition shall include a Statement of Proposed Distribution.

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

(c) In the event that an Accountant/Petitioner files an account/Petition for Adjudication required by these Rules and thereafter for a two (2) year period fails to file Statement of Proposed Distribution, the Court sua sponte, upon recommendation of the Orphans' Court Auditor and/or upon motion of a party in interest, may dismiss without prejudice, and consider the account withdrawn

with 10 days prior notice to the Accountant/Petitioner. The Accountant/Petitioner shall have the right to re-file an account, upon the payment of the filing fee. At the time of re-filing an account, the Accountant/Petitioner shall be required at a minimum to file a Statement of Proposed Distribution.

### **6.9.2 Unknown or Non-Resident Distributees. Report by Fiduciary.**

Whenever it shall appear at the audit of an account that the identity or whereabouts of a distributee is unknown, or that if distribution is made, the beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property to be awarded, and the Court is requested to withhold distribution or to make a provisional award thereof to the accountant, to the Clerk of the Orphans' Court, or to the State Treasury through the Department of Revenue, or in any manner other than to the distributee or the nominee of said distributee, the fiduciary or his counsel shall submit to the Court or auditor, as the case may be, a written report outlining the investigation made and the facts upon which the request is based.

### **6.9.3 Contents of Report.**

The report shall be submitted at the audit and shall include substantially the following:

(a) *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 at the audit, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(1) The nature of the investigation made to locate the heirs of the decedent, in complete detail; and

(2) In cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain. The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; 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.

(b) *Non-Resident Distributees.* If the fiduciary requests the Court to withhold distribution to a non-resident distributee, he or she shall submit a written report at the audit, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(1) The relationship of the distributee to the decedent, and any available information concerning his present whereabouts;

(2) 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

(3) The reasons for the request that distribution be withheld, and the suggested manner of withholding.

### **6.9.4 Additional Receipts and Disbursements.**

Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the Statement of Proposed Distribution or in a separate statement attached thereto.

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

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

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

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

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

(e) The Court, for cause shown, may extend the time for filing of objections; provided that a request for extension of time by any person or entity having received notice of the Account/Petition for Adjudication and Statement of Proposed Distribution has been filed or presented prior to the date of the audit.

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

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

(h) Accounts/Petitions for Adjudication in proper form and to which no Objections are filed will be audited and confirmed absolutely without court hearing.

### **6.11.1 Schedule of Distribution: Confirmation of Title to Real Property.**

Approval of a schedule of distribution of real estate shall be in the nature of a confirmation of title in the respective distributees.

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

(b) *Description of Real Property. Certification by Counsel.* Real property shall be described in the manner appearing in the last deed of record and shall, in addition, include information pertinent to the derivation of decedent's title.

### **6.11.2 Determination of Title to Real Property. PEF Code Section 3546.**

(a) *Contents of Petition.* A petition under PEF Code Section 3546 for the determination of title shall set forth:

(1) The name of the petitioner and the relationship of the petitioner to the decedent;

(2) The facts on which the claim of the petitioner is based;

(3) Whether the decedent died testate or intestate, and where, when and to whom letters were granted;

(4) A description of real property located within the Commonwealth, and the place, book and page of recording the last deed thereto;

(5) The names and addresses of all known creditors and parties in interest; and

- (6) The facts material to a determination of the title.
- (b) *Exhibits*. The following exhibits shall be attached to the petition:
  - (1) The notice which has been given to creditors, parties in interest; and, if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and
  - (2) A copy of the decedent's Will.
  - (c) *Service*. The decree shall be served on all known heirs and creditors of the decedent thirty (30) days prior to final confirmation, which must be at least three (3) months after the date of the decree nisi. The final confirmation date shall be advertised once in the legal publication and once in a newspaper of general circulation, or as the Court shall otherwise direct.

**RULE 7  
EXCEPTIONS**

**7.1.1 Filing of Exceptions**

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

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

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

- (1) An Adjudication approving an account and distribution as set forth on an audit statement or statement of proposed distribution; and
- (2) Where not less than ten (10) business days' written notice of intention to present the petition and a copy of the petition and proposed Order or Decree has been given to all parties in interest:
  - (A) Those approving settlement of a small estate on petition or settlement of an estate, guardianship or trust administration;
  - (B) Those approving public or private sale of real estate;
  - (C) Those approving a claim for family exemption;
  - (D) Those entered upon petition in other matters where such notice has been given.
- (b) Where the moving party has given to all parties in interest not less than ten (10) business days' written notice of intention to present a petition specified in this Rule or, in the case of an account, audit statement or statement of proposed distribution, has given notice of the filing and deadline for filing written objections in accordance with the requirements of the Local Rule 6.9.1(b), the failure by a party in interest to assert objections prior to entry of the Order, Decree or Adjudication shall not be authorized or allowed.
- (c) All accounts, audit statements, statements of proposed distribution and petitions subject to this Rule to which objections must be asserted in timely fashion or are waived shall be accompanied by a notice to all parties in interest, signed by the moving party or that party's counsel and substantially in the following form:

(CAPTION)

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

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

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

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

**OR**

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

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

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

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

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

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



**7.1.3 Finality of Other Orders and Decrees.**

All other Orders and Decrees entered in proceedings shall be final as of the date of filing unless exceptions thereto are taken within twenty (20) days after the date of filing thereof.

**7.1.4 Effect of Exceptions Upon Decree Nisi.**

(a) An exception to any part of a Decree Nisi shall stay the entire Decree, so that the Decree shall not be a final Order until the exception(s) is/are disposed of.

(b) After expiration of the time for filing of exceptions, the Court upon petition filed by any party may enter an Order or Decree declaring those portions of the Decree Nisi not excepted thereto final and binding pending entry of a Final Decree after consideration of the exceptions that have been filed.

(c) The entry of an interim Order or Decree in accordance with Local Rule 7.1.4(b) shall not render any portion of the original Decree Nisi a final Order for purposes of appeal.

**7.1.5 Exceptions to Orders and Decrees.**

(a) *Additional Exceptions.* In the event exceptions are filed by any party, all other parties shall have an additional period of ten (10) days from the service of the initial exceptions within which to file additional exceptions.

(b) *Form of Exceptions.* All exceptions shall set forth, with particularity and in numbered paragraphs, the portion(s) of the Order to which exception is taken and the basis for each exception. Only one exception shall be made per paragraph. Points of law may be addressed in a separate brief.

(c) *Procedure for Service of Exceptions.* All exceptions shall be served upon the judge who made the Order or Decree being excepted to and upon all other parties or their counsel of record promptly after filing. The party filing the exception shall file a certificate of service.

(d) *Procedure Following Filing of Exceptions.*

(1) Upon the expiration of time for filing additional exceptions and replies to exceptions filed, the Court shall enter an Order setting the time and date of the hearing or argument on the exceptions if it deems the same appropriate, unless the parties should stipulate that no argument and/or hearing is necessary.

(2) The Court may order the parties to file briefs or memoranda supporting the position(s) taken by the parties, and may set deadlines for their filing.

(3) Following argument, or upon submission of the exceptions, replies and/or briefs, if any, or upon stipulation and without argument, the Court shall enter an Order or Decree disposing of the exceptions as raised.

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

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

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

**7.1.7 Other Exceptions.**

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

**RULE 8****AUDITORS AND MASTERS****8.1.1 Appointment.**

(a) *Auditors.* An Auditor shall be appointed only when all parties in interest, or their counsel, consent thereto in writing.

(b) *Master.* A Master may be appointed by the Court, on its own motion, or upon the petition of the accountant, or of any party in interest.

(c) Auditors and Masters shall be members of the Bar of this Court.

**8.1.2 Manner and to Whom Notice is Given.**

(a) An Auditor or Master shall give at least ten (10) days' written notice of his appointment and of the time and place of his or her first hearing to all persons who have appeared of record, and to such other persons and in such manner as the Court may direct.

(b) 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.

(c) The hearing shall be held at a time and place indicated and not later than forty-five (45) days after the Auditor's or Master's appointment and shall be extended only upon application to the Court for good cause shown.

(d) The report of the Auditor or Master shall be filed within ninety (90) days after appointment and shall be extended only upon application to the Court for good cause shown.

**8.6.1 Notice of Intention to File. Exceptions.**

(a) An Auditor or Master shall give ten (10) days' written notice to all parties of record of his or her intention to file his report on a day certain and make a copy thereof available for their inspection during such notice period.

(b) Exceptions, if any, shall be filed with the Auditor or Master before the date fixed for the filing of the report and notice thereof shall be given by the exceptant to all parties of record. Upon the filing of exceptions, the Auditor or Master shall consider and dispose of them, and may amend the report if the exceptions are, in the opinion of the Auditor or Master, in whole or part, well founded.

**8.7.1 Exceptions Before the Court.**

At the hearing before the Court on the confirmation or approval of the report of an Auditor or Master, the exceptant shall be confined to the exceptions filed by that party with the Auditor or Master unless otherwise allowed by the Court.

**8.8.1 Filing of Security With Clerk.**

The Court may require that security be filed with the Clerk for the compensation of the Auditor or Master and, until filed, the Auditor or Master need not proceed with the performance of his duties.

**8.8.2 Compensation of Auditor or Master.**

Any Auditor or Master appointed by the Court under these Rules shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the Auditor or Master shall recommend and the Court shall direct. The Court may require payment of the Auditor's or Master's fees in advance.

**RULE 9****OFFICIAL EXAMINERS****9.1.1 Examiners—Appointment and Ordinary Duties.**

The Court may appoint by special Order an examiner or examiners who shall examine the assets held by a fiduciary and make full written report thereon to the Court showing what assets belong to the estate, how they are registered or otherwise earmarked as the property of the estate to which they belong, and where and how the cash belonging to the estate is kept or deposited.

**9.1.2 Examiners—Special Duties.**

The Court may, in any Order appointing an examiner or examiners, also request the examiner or examiners to accomplish one or more of the following:

- (a) Determine, in the case of a trust, if its purposes are being carried out;
- (b) Determine if the funds and assets in the hands of the fiduciary are being used or applied in accord with any trust instrument, Will, applicable statute, regulation or Court Order;
- (c) Make a written report including findings of fact, conclusions of law; and, when appropriate, recommendations for the consideration of the Court; and
- (d) Such other matters at the Court may designate.

**9.1.3 Examiners—Compensation.**

Examiners shall be allowed such fees from principal or income, or apportioned between principal and income, as may be directed by the Court.

**RULE 10****MATTERS BEFORE THE REGISTER OF WILLS****10.1 Application and Construction of Register of Wills Rules.****10.1.2 Application of Rules.**

These rules shall govern all proceedings before the Register of Wills.

**10.1.3 Construction of Rules.**

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding before the Register of Wills. The Register of Wills at every stage of any action or proceeding before the Register, in the Register's discretion, may disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

**10.1.4 Filing of Death Certificates—Estates.**

(a) A death certificate for the decedent shall be filed with the Register of Wills not later than with the first submission next following the grant of letters.

(b) The Register of Wills shall have authority to impose a filing fee for a death certificate filed subsequent to the submission of a petition requesting grant of letters.

**10.1.5 Extension of Time Limitation.**

The Register of Wills, upon his or her own motion, or upon the motion of any party, may extend any limitation of time prescribed by these rules.

**10.2 Pleading and Practice before the Register.****10.2.1 Pleading and Practice.**

The practice, procedure and forms used before the Register of Wills shall be in substantial conformity with the practice, procedure and forms approved by the Supreme Court of this Commonwealth, or, in the absence thereof, the practice, procedure and forms set forth herein or as approved by the Erie County Court of Common Pleas, Orphans' Court Division.

**10.2.2 Jurisdiction of the Register.**

All proceedings to determine the validity of a document offered for probate, and all proceedings to grant or revoke letters testamentary or letters of administration shall be before the Register of Wills of the county wherein the decedent maintained his or her last principal residence, or, if a decedent's estate has been opened, the county where the Register has issued letters or a will has been probated.

**10.2.3 Presiding Officer.**

The Register of Wills, or a duly deputized attorney acting as solicitor for the Register, or a Deputy Register of Wills specifically deputized and authorized by the Register of Wills to conduct hearings, shall be the presiding officer in all proceedings before the Register of Wills.

**10.2.4 Evidence.**

The Rules of Pennsylvania Evidence shall be applicable to all proceedings before the Register of Wills.

**10.2.5 Stenographic Record.**

(a) The Register of Wills may, at the Register's discretion, require or permit a stenographic record to be made, at the parties expense, the cost of which shall be allocated as directed by the Register.

**10.2.6 Objections to Evidence.**

Any objections to any evidence to be presented before the Register shall be made to the Register, or the Deputy Register or attorney acting as solicitor, who is conducting the hearing, who shall rule upon such objections at the time that they are made. In the discretion of the person presiding over the hearing, the presiding officer may defer ruling upon the objection until the conclusion of the hearing.

**10.3 Discovery Before the Register.****10.3.1 Limitations on Discovery.**

Discovery before the Register, upon application to the Register by an interested party, shall be limited to the following: depositions, request for production of documents, request for admissions, subpoenas.

**10.3.2 Objections to Discovery.**

Objections to discovery shall be addressed to, and shall be decided by, the Register of Wills or the Deputy Register or solicitor presiding over the hearing.

**10.3.3 Additional Discovery.**

Requests for additional discovery beyond the scope of these rules shall be made to the Orphans' Court Division.

**10.4 Caveat Practice and Procedure.**

**10.4.1 Form of Caveat.**

A formal or informal caveat to initiate the contest of a testamentary writing or to contest a petition for letters testamentary or administration shall be filed with the Register of Wills upon the Forms of Caveat as attached to the end of this rule.

BEFORE THE REGISTER OF WILLS OF ERIE COUNTY, PENNSYLVANIA

Estate of [name of deceased], Deceased

**CAVEAT**

To the Register of Wills of Erie County:

You are hereby requested to admit no paper to probate as the last will and testament of [name of deceased], deceased, who died on [date of death], at [specify location],

and was last domiciled at death in Erie County, Pennsylvania. It is further requested that no letters testamentary or letters of administration be issued upon the above estate in connection with the probate of any paper as the decedent's last will and testament without notice to the undersigned.

\_\_\_\_\_  
[Name of attorney] for [name of client]  
[address and phone # of attorney]  
or if no attorney  
[address and phone # of caveator]

**10.4.2 Bond and Form of Bond.**

After the filing of a caveat with the Register of Wills, the Register may fix a bond at an amount determined at the Register's discretion. The bond as filed before the Register shall be filed upon the Bond Form as attached to the end of this rule.

BEFORE THE REGISTER OF WILLS OF ERIE COUNTY, PENNSYLVANIA

Estate of [NAME OF DECEASED], Deceased

No. [specify number] of [specify year]

**BOND OF CAVEATOR**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_

\_\_\_\_\_  
Name(s) of caveator(s)

and \_\_\_\_\_

\_\_\_\_\_  
Name(s) of Bonding Agency/Insurance Company

are held firmly bound unto the Commonwealth of Pennsylvania, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be paid to the said Commonwealth, to which payment well and truly to be made, we do bind ourselves jointly and severally, for and in the whole, our heirs, executors, administrators, successors and assigns, and each and every of them, firmly by these presents.

**WHEREAS**, the said \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, filed in the office of the Register of Wills of Erie County, Pennsylvania, a Caveat against the admission to probate of any paper writing alleged to be the last Will and Testament of \_\_\_\_\_ Deceased, or the granting of Letters \_\_\_\_\_, on the estate of \_\_\_\_\_ Deceased;

**NOW, THEREFORE**, the condition of this obligation is, that if the said Caveator(s) shall pay any and all costs which may be occasioned by reason of such caveat, and which may be decreed by such Register of Wills, or by the Orphans' Court Division of Erie County, to be paid by such Caveator(s), then this obligation to be void, otherwise to remain in full force and effect.

Sealed and dated this \_\_\_\_\_, the presence of:

\_\_\_\_\_  
Signature of Personal Representative(s)

\_\_\_\_\_  
Signature of Personal Representative(s)

\_\_\_\_\_  
Signature of Bonding Agent

**10.4.3 Time for Fixing the Amount of Bond.**

The Register, after the filing of an informal or formal caveat with the Register, shall enter an Order fixing the amount of bond to be filed, and in the discretion of the Register, the Register may:

(a) Enter an Order within 10 days after the filing of an informal caveat fixing the amount of the bond; or

(b) Wait until the contested document is presented for probate or grant of letters, or the filing of a formal caveat, and fix the amount of the bond within 10 days after the presentation of the challenged document or the filing of the formal caveat.

**10.5 Citation Practice and Procedure.**

**10.5.1 Request for Citation.**

Any party in interest may file a petition with the Register of Wills requesting that a citation be issued by the Register directing the appearance of a party before the Register, the production of a document, or requesting other appropriate relief before the Register.

**10.5.2 Form of Citation.**

All citations issued by the Register shall be upon the form adopted or approved by the Register's Office.

**10.5.3 Person Responsible for Service of Citation.**

Service of the citation issued by the Register upon the appropriate parties to be served shall be the responsibility of the party requesting the issuance of the citation.

**10.5.4 Method of Service of Citation.**

(a) All citations issued by the Register shall be served upon the party to whom the citation is directed by certified mail, restricted delivery, with return receipt showing the signature of the party to whom the citation has been directed or by personal service by the Sheriff or a competent adult. Service outside of the Commonwealth shall be as set forth in PA Rule of Civil Procedure 404.

(b) Citations issued by the Register shall be served within 30 days from the date of issue. The Register, upon cause shown, may extend the time for service.

**10.6 Notice.****10.6.1 Distribution of Pennsylvania Orphans' Court Rule 5.6 and Rule 6.12 Notices.**

Upon the grant of Letters Testamentary or Letters of Administration the Register shall provide to the personal representative PA Orphans' Court Rule 5.6 and Rule 6.12 Notice forms. The Register shall not be required to mail the forms to the personal representative or counsel of record, or notify the personal representative or the attorney of record of their obligation to file the forms if they have not been timely filed.

**10.6.2 Manner of Proceeding.**

Whenever a notice is to be given by a person, notice shall be in the manner prescribed in Orphans' Court Rule 5.

**10.7 Conclusion of Hearing and Decree of Register.****10.7.1 Procedure Before the Register Upon Conclusion of the Receipt of Testimony.**

At the discretion of the Register, at the conclusion of the presentation of testimony from witnesses and the receipt of documents offered into evidence, the Register may require the following from the parties:

(a) closing arguments from each of the parties or their counsel

(b) a brief from each of the parties requesting the following to be included in the brief

- (1) the parties' argument supporting their position
- (2) proposed Finding of Fact
- (3) proposed Conclusions of law

The Register, when briefs are required, shall set the time within which the parties shall file their briefs with the Register, which period of time shall not be less than 30 days nor more than 45 days from the date of the conclusion of the hearing.

**10.7.2 Decision of the Register.**

Within 30 days following the conclusion of the hearing before the Register, or within 30 days after the submission of written briefs, if required, whichever is later, the Register shall render a written decision. The Register, in rendering his or her decision, may, but need not, render a written opinion containing findings of fact and conclusions of law, together with a discussion of the issues before the Register. The opinion of the Register shall be accompanied by a **Decree** of the Register containing the Register's decision.

**10.8 Appeals from Decision of Register.****10.8.1 Right of Appeal.**

Any party aggrieved by a decision of the Register shall have the right to appeal the Register's decision to the Orphans' Court Division of the Court of Common Pleas in accordance with PEF Code § 908.

**10.8.2 Procedure for Appeal from Decisions of the Register of Wills.**

Any appeal from a decision of the Register of Wills shall be initiated as follows:

(a) A notice of appeal shall be filed with the Register of Wills on the form attached to the end of this rule;

(b) A petition for appeal and issuance of citation shall be filed with the Clerk of the Orphans' Court, signed by counsel, if any, verified by petitioner and shall set forth the following:

(1) The caption;

(2) A heading indicating briefly the purpose of the petition;

(3) A concise statement of the facts relied upon to give the Court jurisdiction and to justify the relief desired, and any averments specifically required by any State Rule or Local Rule. The statement shall be divided into paragraphs numbered consecutively, each containing but one material allegation, and shall cite the applicable section of any Act of Assembly relied upon;

(4) The names of all parties in interest, indicating those not sui juris. The names of fiduciaries of parties not sui juris shall be set forth with references to their appointments;

(5) A prayer for the relief desired;

(6) There shall be attached to the appeal petition as exhibits the originals or copies of all Wills, codicils, consents, joinders, approvals, contracts and any other written instruments relied on or pertinent. Exhibits which are not originals and not otherwise certified shall be certified by counsel to be correct. If the petitioner is unable to attach any exhibit, such shall be stated in his petition, with the reason for the inability; and

(7) Within ten (10) days of filing the petition for appeal, the appellant shall file a bond and secure its approval by the Register and shall request a Citation by the Court to all parties in interest, including those not represented on the record.

(c) Non Pros.

If the bond is not presented within ten (10) days of taking the appeal, the Clerk of the Orphans' Court, upon praecipe of the appellee, shall order a judgment of non pros.

(d) Certified Cases.

When a certification of a dispute has been made by the Register of Wills to the Orphans' Court Division under PEF Code § 907, the Court will determine whether pleadings will be required.

(e) Jury Trial.

A person entitled to and desiring a trial by jury, shall make timely demand therefore in accordance with the PEF Code.

(f) Action Upon Default.

If the respondent in any action fails to comply with the requirements of any citation or notice, the Court, upon proof of service thereof, shall make such Order as may be just and necessary.

(g) Enforcement of Decrees.

(1) *Applications for Enforcement, Procedure.* All applications to enforce a decree or adjudication for the payment of money or costs or for the delivery of any goods, chattels, or other assets of an estate by a fiduciary or surety, shall be by petition of the person or persons entitled thereto, briefly setting forth the facts. If the application is satisfactory to the Court, an Order will be granted to pay or transfer, assign or deliver, as the case may be.

(A) *Service.* If possible, a copy of the Order, certified by the Clerk or counsel, must be served upon the respondent personally at least ten (10) days prior to the day specified

therein. If such service is not possible, service may be made as required of a citation by PEF Code § 765.

(2) *Writ of Attachment.* If the Order of Court is not complied with on or before the day specified, upon proof of service of the order as required of a citation by Section 765, PEF Code, 20 Pa.C.S.A. Section 765, and upon petition setting forth the necessary facts, a writ of attachment of the person will be awarded.

(3) *Sequestration.* If an Order to pay or transfer, assign or deliver has not been complied with on or before the date specified in such Order, upon proof of service of the Order upon a fiduciary or surety in the manner required for the service of a citation by PEF Code § 765, or upon proof of service of notice of such Order as provided in Section 768 of said Code, and upon petition setting forth the necessary facts, the Court may direct sequestration of real or personal property or attachment execution.

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

Estate of *[name of deceased]*, Deceased

No. *[specify number]* of *[specify year]*

**APPEAL FROM PROBATE**

To the Register of Wills of Erie County:

You are hereby notified that the undersigned hereby appeals to the Orphans' Court of said county from the decision of the Register of Wills in the above estate admitting to probate as a certain writing and alleged last will and testament of *[name of deceased]*, the deceased, a writing dated *[date of writing]*, and granting letters testamentary thereon.

*[Name of Attorney for Appellant]*

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

Estate of *[name of deceased]*, Deceased

No. *[specify number]* of *[specify year]*

**PETITION FOR CITATION TO SHOW CAUSE WHY APPEAL FROM PROBATE  
SHOULD NOT BE SUSTAINED**

To the Honorable, *[name of judge]*, the Orphans' Court Judge of the said Court:

**NOW** comes *[name of petitioner]*, petitioner(s), and request(s) your Honorable Court to issue a citation in the above matter directed to the executor of the estate of *[name of deceased]* and the heirs of the estate of *[name of deceased]* to show cause why the decision of the Register of Wills admitting to probate a writing dated *[date of writing]*, as the last will and testament of the above decedent should not be vacated and the appeal therefrom sustained, and says:

1.

The above-named decedent, *[name of deceased]*, was a resident of *[name of county]* County at the time of his/her death on *[date of death]*, with a last principal address of *[last principal address of deceased]*.

2.

Your Honorable Court has jurisdiction over this matter under and pursuant to 20 Pa.C.S.A. § 711(1) and (18).

3.

On *[specify date]*, the Register of Wills admitted to probate as the last will and testament of the above-named decedent a writing dated *[date of writing]*. Your petitioner(s) feel(s) the aforesaid last will and testament admitted to probate is not the last will and testament of the decedent and should not have been admitted to probate for the following reasons: *[specify reasons]*.

4.

Your petitioner(s) is(are): (1) beneficiar(y)(ies) under a prior last will and testament of the decedent dated *[date of will]*; or (2) is(are) the person(s) entitled to inherit under the intestate laws of the Commonwealth of Pennsylvania and will be the heir(s) of the decedent if the aforesaid last will and testament is not admitted to probate (*[specify relevant facts]* *[state such other facts as will allow petitioner(s) to either gain or lose if the last will and testament admitted to probate is allowed to stand as the last will and testament of the decedent or is set aside]*).

5.

The name(s) and address(es) of the executor(s) of the last will and testament admitted to probate is(are) as follows: *[name of executor]* *[address of executor]*.

6.

The name(s) and address(es) of all other parties in interest is(are) as follows: *[name of party/parties in interest]*  
*[address of party/parties in interest].*

7.

The proceedings before the Register of Wills have consisted of the admission to probate of a purported will of the decedent dated *[date of purported will]*, and the grant of letters testamentary thereon unto *[name of person granted letters]*. A copy of the Register's decree is attached hereto and marked Exhibit A.

8.

On *[date of filing]*, your petitioner(s) filed an appeal from the Register's order admitting the will to probate, a copy of said Notice of Appeal having been served upon the Register of Wills on *[date of service]*. A true and correct copy of the Notice of Appeal is attached hereto and marked Exhibit B.

9.

Your petitioner(s) believe(s) and therefore aver(s) that the testator (lacked testamentary capacity) (executed the aforesaid last will and testament as the result of undue influence), and in support of said allegation allege(s) as follows: *[specify allegations]*.

[OR]

The signature of the testator is not the signature of the testator, but is a forgery and in support thereof the petitioner(s) allege(s) as follows: *[specify allegations]*.

[OR]

The aforesaid last will and testament is not the last will and testament of the decedent for the reason that the aforesaid will was procured by fraud and misrepresentation, and in support of said allegation, the petitioner(s) allege(s) as follows: *[specify allegations]*.

**WHEREFORE**, petitioner(s) request(s) that your Honorable Court issue a citation upon the respondent(s) to show cause why the appeal from the decree of the Register of Wills admitting to probate the writing dated *[date of writing]* should not be sustained, and that the decree of the Register of Wills be opened to permit the Register to receive and act upon (a petition for probate of an earlier writing dated *[date of writing]*, as the last will and testament of the decedent) (a petition for letters of administration on the estate of decedent).

---

*[Name of Attorney for Petitioner(s)]*

*[Add verification of petitioner(s).]*

### **10.8.3 Decree of Orphans' Court upon Sustaining Appeal.**

Upon appeal from a decision of the Register of Wills, if the Orphans' Court sustains the appeal, the Court shall:

(a) In sustaining an appeal from probate shall direct the Register to revoke its decree of probate;

(b) In sustaining an appeal from the grant of letters shall direct the Register to revoke its grant of letters;

(c) In an appropriate case, if the Court directs the revocation of a decree of probate or the grant of letters, the Court shall direct the Register to enter an appropriate decree of probate or grant appropriate letters testamentary or administration to the appropriate person or persons.

### **10.8.4 Decree of Orphans' Court upon Dismissing Appeal.**

Upon dismissing an appeal, the Orphans' Court shall enter a final Decree dismissing the appeal from the Register's decree.

## **RULE 12**

### **SPECIAL PETITIONS**

#### **12.0.1 Settlement of Small Estates.**

(a) Form of Petitions. Contents.

Petitions under PEF Code § 3102, as amended for the settlement of small estates shall set forth:

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

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

(3) The names and relationship of all beneficiaries entitled to any part of the estate under the Will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the PEF Code and whether any of them are minors, incapacitated or deceased with the names of their fiduciaries.

(4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.

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

(6) An itemization of all administrative costs, funeral expenses, debts and distributions, and of assets then remaining for distributions.

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

(8) That ten (10) business days' written notice of intention to present the petition has been given to every

unpaid beneficiary, heir or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown.

(9) A prayer for distribution of the property, setting forth the persons entitled and their distributive shares, and requesting the discharge of the personal representative and the release of surety, if letters have been granted and advertised.

(b) Required Exhibits.

The following exhibits shall be attached to the petition:

(1) The original of the decedent's Will, if it has not been probated.

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

(3) A receipt for the filing of an inheritance tax return reporting the assets which are the subject of the petition.

(4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least ten (10) business days prior to presentation of the petition.

(5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

#### **12.1.1 Family Exemption. Additional Requirements.**

A petition for the family exemption shall also set forth in separate paragraphs:

(a) The name, residence and date of death of the decedent;

(b) The name, address and relationship of the petitioner to the decedent, and whether the petitioner was a member of the same household as the decedent at the date of decedent's death;

(c) The name of the spouse of the decedent, if any, and whether the spouse forfeited spousal rights;

(d) Whether the decedent died intestate or testate, and the date of the appointment of the fiduciary, if any;

(e) The description and value of the property claimed;

(1) If an inventory has been filed, the petition shall set forth the value of the property claimed as fixed in the inventory.

(2) If it is not included in the inventory, an appraisal or written confirmation of the value of the property as of the date of death must be attached to the petition, unless the property claimed consists of personal property in the form of cash, bank accounts or government bonds whose value is ascertainable from its face; and

(f) That ten (10) business days' prior notice of intention to present the petition at a stated regular session of Motion Court has been given to the personal representatives, or when no letters have been granted, to the parties adversely affected. The ten (10) days' notice requirement shall not be required in the case of a petition filed by a surviving spouse, nor shall ten (10) days' notice be required if the petition contains consents executed by all other parties in interest.

(g) The family exemption petition may be included in a petition for settlement of small estates.

#### **12.5.1 Minor's Estate. Appearance Before the Court. Minor over Fourteen.**

A minor over the age of fourteen (14) shall appear in person at the presentation of the petition for appointment

of guardian. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition.

#### **12.5.2 Minor's Estate. Restricted Account.**

(a) No guardian shall exercise any authority under his appointment until the guardian shall have filed and had approved by the Court a bond in an amount directed by the Court, except where the guardian is a corporate fiduciary authorized to act as such under applicable law.

(b) In lieu of bond, the Court may authorize the guardian to deposit the cash in a Federally insured interest bearing account or a money market or cash management account guaranteed by the Security Investors Protection Corporation, with the restriction, "Not to be withdrawn prior to the minor's attainment of the age of eighteen (18) except on Order of Court." Proof of such deposit shall be presented to the Clerk of the Orphans' Court within thirty (30) days.

#### **12.5.3 Minor's Estate Not Exceeding Amount Established by PEF Code.**

(a) *Disposition. In General.* If the value of the real and personal estate of a minor does not exceed the amount established by the PEF Code, the Court may:

(1) Authorize payment or delivery thereof to the minor, or the parent or other person maintaining the minor; or

(2) Direct the deposit of the money in a restricted account or accounts, in the name of a natural guardian of the minor, or of the minor alone; 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 entire estate of a minor does not exceed the amount established by the PEF Code, 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 Rules governing the sale 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 or accounts.

#### **12.5.4 Minor's Estate. Allowance.**

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

(a) The manner of the guardian's appointment and qualification, and the dates thereof;

(b) The age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, and the name and age of the minor's spouse and children, if any;

(c) The value of the minor's estate, real and personal, where located and the net annual income;

(d) The circumstances of the minor, whether employed or attending school; and, if the minor's parents are living, the reason why the parents are not discharging their duty of support;

(e) The date and amount of any previous allowance by the Court;

(f) The financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; including whether

there is adequate provision for the support and education of the minor, spouse and children.

(g) If the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if known, for the guardian's failure to do so.

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

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

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

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

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

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

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

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

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

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

(9) Include a proposed Order for distribution.

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

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

(c) *Notice of Hearing.* Notice of hearing on the Petition shall be given by United States first class mail, or as the

Court shall direct, to all parties which shall include the minor or incapacitated person, the minor's parents, the minor's or incapacitated person's guardian(s) and any other person so designated by the Local Rules, the State Rules or the Judge to whom the Petition is presented. Proof of service shall be filed with the Court pursuant to the Local Rules.

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

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

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

(e) Petitions under this Rule shall be substantially like the form at the end of this Rule.

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

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

#### (CAPTION)

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

##### **To the Judge of your Honorable Court:**

This Petition respectfully represents:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Respectfully submitted,

\_\_\_\_\_  
Petitioner

NAME OF LAW FIRM

BY: \_\_\_\_\_  
Address  
Telephone  
Attorney No.

VERIFICATION

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

\_\_\_\_\_

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the foregoing Petition and this Court being satisfied as to the reasonableness of the settlement and that the settlement is in the best interest of the minor/incapacitated person hereto, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The settlement set forth in the Petition in the above matter presented to the Court is approved as being in the best interest of the minor/incapacitated person, \_\_\_\_\_.

2. Counsel fees to the firm of \_\_\_\_\_, Attorneys-at-Law, of \$ \_\_\_\_\_ and the reimbursement of \_\_\_\_\_, Esq. for expenses, \$ \_\_\_\_\_ from the settlement proceeds are approved.

3. The settlement sum of \$ \_\_\_\_\_ is directed to be disbursed as follows:

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

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

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

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

J.

### 12.6.1 Appointment of Trustee. Exhibits.

The following exhibits shall be annexed to the petition:

- (a) A copy of the trust instrument;
- (b) The consent by the proposed trustee to act as such; and
- (c) Any consents or joinders of parties in interest.

### 12.6.2 Appointment of Successor Co-Trustee.

When the governing instrument requires two or more co-fiduciaries and one is unable to serve for any reason, it shall be the obligation of the other fiduciary to petition the Court for the appointment of a successor co-fiduciary.

### 12.7.1 Discharge of a Personal Representative. Section 3531—PEF Code.

When the gross real and personal estate of a decedent does not exceed the amount established by statute, the personal representative, after the expiration of one year from the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the PEF Code. The petition shall conform as far as practicable to the requirements of a petition for settlement of a small estate under the provisions of Section 3531 of PEF Code.

### 12.9.1 Public Sale. Contents of Petition. Additional Requirements.

(a) *Personal Representative.* A petition by a personal representative to sell real property at public sale, under Section 3353 of the PEF Code shall set forth in separate paragraphs:

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

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

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

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

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

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment × common level ratio factor); and

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

(b) *Trustee.* A petition by a trustee to sell real property at public sale, under Section 3353 of the PEF Code, shall also set forth in separate paragraphs:

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

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

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

(4) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment × common level ratio factor);

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

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

(c) *Guardian of Minor.* A petition by a guardian to sell real property at public sale, under Section 3353 of the PEF Code, shall set forth in separate paragraphs:

(1) The age of the minor;

(2) The names of the minor's next of kin and the notice given them of the presentation of the petition;

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

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

(5) The nature and extent of the interest of the minor, of the guardian and of third persons in the real property;

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment × common level ratio factor); and

(7) Sufficient facts to enable the Court to determine that the proposed sale will be in the best interest of the minor.

(d) *Guardian of Incapacitated Person.* A petition by a guardian to sell real property at public sale, under Section 3353 of the PEF Code, shall set forth in separate paragraphs the same information as required for the sale by a guardian of a minor with sufficient additional facts to enable the Court to determine that the proposed sale will be in the best interest of the incapacitated person.

#### 12.9.2 Public Sale. Exhibits.

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

(a) Certification that ten (10) business days' notice has been given to those parties who do not consent or join; and

(b) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

#### 12.9.3 Public Sale of Real Property. Notice. Confirmation.

(a) *Notice.* After the allowance of a petition for public sale, notice in approved form of the proposed sale shall be given in the manner provided by Local Rule.

(b) *Confirmation.* If no objection is filed, the Court may enter a decree confirming the sale upon submission of a return of sale as provided by Local Rule.

#### 12.9.4 Public Sale. Security.

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

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

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

(b) When seeking Court approval of a private sale or transfer to a personal representative under 20 Pa.C.S.A. § 3356 and/or Pennsylvania Orphans' Court Rule 12.10, the petitioner may avoid the need to present/secure a second affidavit of value provided that all possible beneficiaries execute a written consent to the relief requested within the petition. The consent shall state that the consenting beneficiary:

(1) has reviewed the petition and affidavit attached to the petition;

(2) is satisfied with the value expressed therein, and

(3) waives the requirement that a second affidavit of value be presented.

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

#### 12.10.2 Private Sale. Exhibits.

*Personal Representative. Trustee. Guardian.* The following exhibits shall be attached to the petition by a personal representative, trustee or guardian to sell real property at private sale:

(a) Certification that ten (10) business days notice has been given to those parties who do not consent or join; and

(b) A copy of the agreement of sale; and

(c) Affidavits in the form required by State Rule 12.10(b) unless otherwise ordered by the Court.

#### 12.10.3 Private Sale. Higher Offer.

Any person desiring to make a substantially higher offer for real property offered at private sale may do so at the time the petition of the fiduciary for leave to make such private sale is presented to the Court, whereupon the Court will make such Order as it deems advisable under the circumstances.

#### 12.10.4 Private Sale. Security.

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

#### 12.10.5 Petition to Fix or Waive Additional Security. Personal Representatives.

(a) *Form of Petition.* In a sale, whether public or private, of real estate by a personal representative acting without benefit of an Order of Court directing or authorizing such sale, but who was required to give bond, the personal representative shall present a petition to the Court before the proceeds of the sale are paid by the purchaser, setting forth:

(1) The date of death of the decedent;

(2) The date of the grant of letters to the petitioner;

(3) The amount of the bond or bonds filed by the petitioner, the date of such filing and the name or names of the surety;

(4) The total valuation of the personal estate as shown in the inventory and appraisal, if any; and the total proceeds of any real estate sold previously;

(5) A short description of the real property sold, the name of the purchaser, the amount of the consideration to be paid and the terms of the sale;

(6) A list of all liens of record known to petitioner, including mortgages, delinquent taxes, judgments, etc., and the names and relationships of all parties in interest; with a brief description of their respective interests; and

(7) A prayer for an Order fixing the amount of additional security or for an Order excusing the filing of additional security.

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

#### 12.11.1 Mortgage of Real Property. Additional Requirements.

(a) *Contents of Petition.* A petition to mortgage real property by a personal representative, trustee or guardian, shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed mortgage loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed mortgage should be approved.

(b) *Exhibits.* There shall be attached to the petition certification that ten (10) business days' notice has been given to those parties who do not consent or join.

#### **12.12.1 Inalienable Property.**

In addition to the requirements of Chapter 83 of the PEF Code and State Rule 12.12, in the case of

(a) *Public Sale.* The content of the petition, required exhibits, notices, confirmation and security shall conform to the requirements of Rule 12.9.1 through 12.9.4.

(b) *Private Sale.* The content of the petition, required exhibits, provisions as to higher offers, security and petitions to fix or waive additional security shall conform to the requirements of Rule 12.10.1 through 12.10.5.

(c) *Mortgage.* The content of the petition, required exhibits, notices and action on security shall conform to the requirements of Rule 12.11.1

#### **12.12.2 Notice. Discretion of Court.**

If it appears that all parties having a present or potential interest may not have been identified or served with notice, the Court shall have discretion to issue a citation and require such additional notice as it deems appropriate.

#### **12.12.3 Inalienable Property. Real Estate or Fiduciaries in Other Counties.**

(a) Fiduciaries whose appointments originated in this county shall obtain leave of this Court to petition the Court of another county of this Commonwealth, under the Inalienable Property Act, to sell or mortgage real property located in that county. Such leave may be obtained by petition to this Court setting forth briefly the substantial averments of a petition for the sale or mortgage of real property.

(b) Fiduciaries whose appointments originated in other counties of this Commonwealth shall obtain leave of the Court of their appointment to petition this Court under Inalienable Property Act to sell or mortgage real property located in this County. The petition to this Court shall comply with the provisions of these Rules with regard to the sale or mortgage of real property and shall include, as exhibits, copies of the petition and of the decree of the Court of origin.

### **RULE 13**

#### **DISTRIBUTION—SPECIAL SITUATIONS**

##### **13.3.1 Unknown Distributee. Contents of Report.**

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 at the time of the filing of the audit or petition to settle a small estate, verified by affidavit of the fiduciary or his counsel, in

which shall be set forth the nature of the investigation<sup>3</sup> made to locate the heirs of the decedent, in complete detail.

### **RULE 14**

#### **INCAPACITATED PERSONS**

##### **14.1.1 Procedure.**

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

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

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

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

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

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

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

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

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

(3) Any attorney in fact under a durable power of attorney;

(4) Such other parties as the Court may direct.

(f) All petitions required by this rule shall be signed by the moving party or that party's counsel and shall contain the following notice:

<sup>3</sup>The term "investigation," as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership; school records; social security; Veteran's Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

(CAPTION)

#### **NOTICE OF GUARDIANSHIP**

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

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

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

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

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

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

**14.2.1 General Practice and Procedure.**

(a) *Petition Contents.* A Petition to adjudicate a person incapacitated and for the appointment of a guardian shall contain all of the information required by PEF Code § 5511(e) and State Rule 14.2 and shall also include the following additional information:

(1) Whether the alleged incapacitated person executed a durable Power of Attorney and the name and current address of the attorney in fact.

(2) Whether the alleged incapacitated person executed a Will or other testamentary document and the location of the original document.

(3) Whether the alleged incapacitated person executed a living will, advance health care directive or similar document and the location of the original document.

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

(c) *Evidence.* The evidence presented may be in accordance with PEF Code § 5518 as provided in the form at the end of this Rule.

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

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

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

IN RE \_\_\_\_\_ : IN THE COURT OF COMMON PLEAS  
: \_\_\_\_\_  
: OF ERIE COUNTY, PENNSYLVANIA  
: Orphans' Court Division  
: \_\_\_\_\_  
An Alleged Incapacitated Person : No.

**AFFIDAVIT OF PHYSICIAN**  
**PURSUANT TO ERIE COUNTY ORPHANS' COURT RULE 14.2.1(c)**

The undersigned, a physician licensed to practice medicine in Pennsylvania does hereby swear or affirm that he/she has examined the following individual and that the information below is accurate and complete to the best of his/her knowledge information and belief:

1. Identification of the Alleged Incapacitated Person

- a. Name \_\_\_\_\_
- b. Address \_\_\_\_\_

2. Reason for Evaluation: Plenary Guardianship of the Person and/or Estate.

3. Affidavit Completed by:

- a. Name \_\_\_\_\_
- b. Office Address \_\_\_\_\_

4. Are you currently licensed in Pennsylvania? \_\_\_\_ Yes \_\_\_\_ No

5. Are you currently licensed in any other states? \_\_\_\_ Yes \_\_\_\_ No

If so, where? \_\_\_\_\_

6. Briefly describe your educational background, professional degrees, Board Certification, etc: \_\_\_\_\_

7. Which hospitals are you affiliated with: \_\_\_\_\_

8. Please list the date(s) upon which you've examined, evaluated or treated the Alleged Incapacitated Person within the past six (6) months: \_\_\_\_\_

9. Please provide your diagnosis of the patient's current condition: \_\_\_\_\_

10. Please provide your prognosis for the patient's condition and recovery: \_\_\_\_\_

- 11. Is the patient able to feed him/herself? \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 12. Is the patient able to dress him/herself? \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 13. Is the patient able to walk unassisted? \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 14. Is the patient's ability to receive and evaluate information and to make and communicate decisions significantly impaired? \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 15. Is the patient presently able to manage her finances or to meet essential requirements for her physical health and safety. \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 16. Is the patient presently able to make and communicate decisions relating to legal, financial or other matters? \_\_\_\_\_ Yes      \_\_\_\_\_ No
- 17. Would it be medically advisable for the patient to be transported to attend the Guardianship hearing at the Courthouse? \_\_\_\_\_ Yes      \_\_\_\_\_ No

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

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

\_\_\_\_\_  
Signature of physician

\_\_\_\_\_  
Printed name of physician

IN RE:

IN THE COURT OF COMMON PLEAS  
OF ERIE COUNTY, PENNSYLVANIA

Orphans' Court Division

No.

\_\_\_\_\_  
An Alleged Incapacitated Person

**AFFIDAVIT TO EXCUSE ALLEGED INCAPACITATED PERSON FROM COURT HEARING  
PURSUANT TO ERIE COUNTY ORPHANS' COURT RULE 14.2.1(d)(1)**

I, \_\_\_\_\_, am a licensed physician (psychologist). I have been licensed to practice in the Commonwealth of Pennsylvania. I do hereby swear or affirm that within a reasonable degree of medical certainty I believe that the above referred to alleged incapacitated person would not be furthered by his/her attendance at the Court hearing regarding his/her incapacity at the Erie County Court House because he/she is incapable of comprehending the nature of the proceedings or participating in any meaningful way in the proceedings. In my professional opinion his/her physical or mental condition would be harmed by the transportation to the Court Room and by his/her attendance at the Court hearing.

I have based my opinion on a personal examination of the individual and my records pertaining to his/her condition.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Signature of physician or licensed psychologist

**14.2.3 Proof of Service.** Prior to the hearing, the petitioner shall file an affidavit or verification that the proper service of notice of the petition and hearing was made to all parties listed in the petition and to any other parties required by the Court to be notified.

**14.2.4 Emergency Guardianships.**

(a) A petition for emergency guardianship under PEF Code § 5513 may be filed by separate petition or with a petition for appointment of a permanent guardian. Reasons for the need for emergency guardianship shall be clearly set forth in the petition.

(b) Notice to the alleged incapacitated person and other interested persons of the petition and hearing shall be required unless it appears to the Court not to be feasible under the circumstances. It shall not be necessary for a citation to issue or be served on the alleged incapacitated.

(c) The emergency guardian of the estate shall account to the Court for all funds it receives and expends during its appointment as emergency guardian.

(d) At the hearing for the appointment of emergency guardian the provisions of PEF Code § 5518, regarding medical testimony, shall apply.

(e) The emergency appointment may be continued by the Court until the final disposition of the petition for determination of incapacity.

**14.2.5 Post Adjudication Duties.**

(a) *Annual report.* Within one year from the date of the appointment, and annually thereafter or otherwise as the Court may direct, the guardian shall file a periodic report in a form approved by the Court.

(b) *Final Accounting.* Upon the death of an incapacitated person, upon an adjudication of capacity or as the

Court may require, the practice and procedure with regard to the filing and auditing of accounts as well as distribution of assets comprising the estate of a person who has been adjudicated incapacitated shall conform with the practice and procedures governing trustees' accounts and small estates.

(c) *Additional Assets.* If, upon the filing of the Inventory, or any time thereafter, it appears that the value of the estate which has, or is about to, come into the possession and/or control of the guardian, exceeds the amount set forth on the original petition by \$10,000 or more, the guardian shall notify the Court which may determine whether additional security is necessary.

(d) *Testamentary Writings, Living Wills and Advance Health Care Directives.* The original and a copy of the will or other testamentary writing and any living will or advance health care directive of the incapacitated person shall be submitted to the Court for inspection as soon as possible following the hearing or, in any event, no later than the date set for the filing of the Inventory. The Court shall compare the copy with the original, retain the copy, and return the original to the guardian.

#### **14.2.6 Modification of Guardianship.**

The guardian, incapacitated person or other interested party may petition the Court for review of the guardianship as follows:

- (a) When the incapacitated person has regained capacity;
- (b) Where there has been a significant change in the ward's capacity;
- (c) Where there is a significant change in the need for guardianship services;
- (d) Upon request for the appointment of a successor guardian;
- (e) For any other good cause shown.

#### **14.3.1 Adjudication of Capacity.**

(a) A petition to adjudicate that a person previously adjudged incapacitated has regained capacity shall set forth:

- (1) The date of the adjudication of incapacity;
- (2) The name and address of the guardian;
- (3) If the incapacitated person has been a patient in a mental hospital, the name of the institution, the date of admission and the date of discharge;
- (4) The present address of the incapacitated person and the names of all persons residing in the same household.
- (5) The names and addresses of the next of kin of the incapacitated person;
- (6) An averment that the mental health of the incapacitated person has been restored; and,
- (7) A request that the guardian be directed to file an account or other final report as the Court may require.

(b) *Proof of Service.* Proof of service of notice of the hearing to all parties in interest shall be presented at the time of the hearing.

### **RULE 15 ADOPTION**

#### **15.1.1 Procedure.**

(a) All Petitions or Motions requiring a hearing including those pertaining to Adoptions, Involuntary Termina-

tions, Voluntary Relinquishments and Confirmation of Consent shall first be submitted to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(b) Upon the assignment of a hearing date the original Petition or Motion shall be filed with the Clerk of the Orphans' Court and a copy of the Order setting the date of the hearing shall be given to the Family/Orphans' Court Administrator.

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

(d) Any Motion or Petition requiring immediate attention of the Court shall be presented at Family/Orphans' Court Motion Court, with notice to all parties as required by Erie County Civil Rule 440.

#### **15.4.1 Involuntary Termination of the Parental Rights of a Putative Father Whose Identity or Whereabouts Cannot be Ascertained.**

The parental rights of a natural or putative father whose identity or whereabouts cannot be ascertained must be terminated by an involuntary termination proceeding prior to approval of a final adoption.

(a) The involuntary termination petition must aver that the natural mother does not know the identity or whereabouts of the natural or putative father, must include his last known address, if known, and must also specify all attempts made by the Petitioner to determine the correct identity of the natural or putative father.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa.R.C.P. 430.

(c) Publication shall include, as a minimum, the contents of the citation attached to the Involuntary Termination Petition. Proof of publication shall be submitted to the Court prior to hearing.

(d) Exceptions to an Involuntary Termination Decree must be filed within ten (10) days of the filing of the Decree pursuant to Rule 7.

#### **15.4.2 Petition to Terminate Putative Father's Rights Under § 2503(d) and § 2504(c)**

(a) *Contents.* A Petition to terminate a putative father's rights under 23 Pa.C.S.A. Section 2503(d) or 2504(c) shall contain the following:

- (1) The names and addresses of the Petitioners;
- (2) The names and addresses of the birth parents and the putative father;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date of any proceedings to terminate the parental of the birth parents, including voluntary relinquishment, involuntary termination, or confirmation of consent;
- (4) A statement of any further proceedings pending in the adoption; and
- (5) The certification from the Pennsylvania Department of Vital Statistics pursuant to 23 Pa.C.S.A. § 5103 showing that no claim of paternity has been filed.

(b) *Procedure.*

(1) Upon presentation of a Petition to Terminate putative father's rights under 23 Pa.C.S.A. §§ 2503(d) or 2504(c), the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after the filing of the petition.

(2) Notice shall be provided in the form provided in 23 Pa.C.S.A. § 2513(b), and service shall be as provided in State Rule 15.6.

(3) Notice shall be given to the birth parents and putative father, and to the parents or guardians of a birth parent or putative father who has not reached age 18.

(4) Following hearing, the Court shall issue such decree as clearly sets forth that the parental rights of the putative father are terminated.

(5) A Petition to Terminate Putative Father's Rights may be brought in the name of the attorney for the adopting parents.

**15.5.1 Petition to Confirm Consent to Adoption, including Stepparent adoptions.**

All written consents to adoption must be confirmed by Court prior to the entry of a final Adoption Decree.

(a) *Form of Petition. Contents.* The Petition to Confirm Consent shall include the following:

- (1) The names and addresses of the petitioners;
- (2) The names and addresses of the birth parents;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date the consent to adoption was signed by the birth parent or parents. The original consent shall be attached to the petition or shall be part of prior pleadings; and

(4) A statement of any further proceedings pending in the adoption.

(b) *Procedure.*

(1) The Petition to Confirm Consent shall be presented to the Family/Orphans Court Administrator to schedule a hearing. The hearing shall be scheduled not less than ten (10) days after the filing of the petition and not less than sixty (60) days after the filing of the consent to adoption, whichever is later.

(2) Notice shall be in the form provided in 23 Pa.C.S.A. Section 2513(b), and service shall be as provided in State Rule 15.6. Notice shall be given to the birth parents and putative father, if applicable, and to the parents or guardians of a consenting parent who has not reached age 18.

(3) Following hearing, the Court shall issue such decree as clearly sets forth that the consent to adoption is confirmed and that all rights of the consenting birth parent are terminated.

(4) A Petition to Confirm Consent may be brought in the name of the attorney for adopting parents.

(5) The Adoption petition shall be filed separately from Petition to Confirm Consent, Petition for Voluntary Relinquishment, or Petition for Involuntary Termination of Parent Rights, and may be filed simultaneously with any aforesaid Petition.

(c) *Hearing.*

At the hearing to confirm the consent the petitioner shall present such information as may be necessary to allow the court to review the circumstances of the execution and the submission of all written consents to adoption so as to determine their validity. The court shall then enter an order confirming or rejecting the written consent to adoption.

IN RE: \_\_\_\_\_ : IN THE COURT OF COMMON PLEAS  
 : OF ERIE COUNTY, PENNSYLVANIA  
 : ORPHANS' COURT DIVISION  
 :  
 INSPECTION OF \_\_\_\_\_ :  
 GESTATIONAL CARRIER FILES \_ NO. AO

**ADMINISTRATIVE ORDER**

**AND NOW**, to wit, this 16th day of September 2008, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Clerk of the Orphans' Court of Erie County shall prohibit public inspections of all gestational carrier files except upon Petition and Order of Court granted for cause shown.

BY THE COURT:

*/s/ Elizabeth K. Kelly*  
 Elizabeth K. Kelly, President Judge

*/s/ John J. Trucilla*  
 John J. Trucilla, Administrative Judge of the Family/Orphans' Court

cc: Raymond Pagliari, Orphans' Court Committee

**INDEX**

	<b><u>Rule No.</u></b>
<b>ABSENTEE</b>	
Method of serving notice .....	5.2.2
<b>ACCOUNTS</b>	
Advertisement.....	6.6.1
Audit	



	<b>Rule No.</b>
Attendance .....	6.4.3
Audit list .....	1.2.1
Audit statement .....	6.9.1
Date of audit .....	6.4.2
Particular audit .....	6.4.1
Postponement .....	6.4.1
Finality of adjudication.....	7.1.2, 7.1.6
Form	
Additional requirements.....	6.1.1
Execution and verification.....	6.1.3
Non-conforming.....	6.6.2
Sales between estate and accountant.....	6.1.2
Small estates .....	6.1.5
Guardians of incapacitated persons	
Adjudication of capacity .....	14.3.1
Emergency guardianship .....	14.2.4
Final account.....	14.2.5
Post adjudication duties.....	14.2.5
Guardians of minors .....	6.2.2
Notice to parties in interest.....	6.3.1
Objections to account.....	6.10.1
Receipts for disbursements .....	6.1.4, 6.9.4
Release of fiduciary and surety .....	1.2.8
Unknown or non-resident distributees.....	6.9.2, 6.9.3
<b>ADDRESS</b>	
Adoption	
Confirmation of consent to adoption including step-parent .....	15.5.1
Involuntary termination of parental rights.....	15.4.1, 15.4.2,
Counsel .....	3.4.1
Determination of title to real property.....	6.11.2
Family exemption.....	12.1.1
Guardianship	
Adjudication of capacity .....	14.3.1
Minor's estates .....	12.5.4
Petition .....	14.2.1
Public sale of real property .....	12.9.1
Legatees, devisees and beneficiaries.....	5.6.1
Public sale of real property	
Guardian.....	12.9.1
Personal representative .....	12.9.1
Public sale .....	5.4.2
Return of notice .....	5.4.1
Trustee .....	12.9.1
Service of pleadings.....	1.2.3
Settlement of small estates .....	12.0.1
<b>ADJUDICATION</b>	
Account receipts and disbursements.....	6.9.4
Determination of title to real property.....	6.11.2
Enforcement of adjudication .....	10.8.2(f)
Exceptions to adjudication.....	7.1.2, 7.1.6
Guardianship	
Adjudication of capacity .....	14.3.1
Duties of guardian .....	14.2.5
Minor's estate .....	6.2.2
Petition for guardianship of incapacitated person.....	14.2.1
<b>ADOPTION</b>	
Consents to adoption	
Confirmation of consent including step-parent adoption.....	15.5.1
Notice.....	15.5.1
Procedure .....	15.5.1
Step-parent adoption.....	15.5.1
Involuntary termination of parent whose identity or whereabouts cannot be ascertained	
Affidavit of diligent search.....	15.4.1
Exceptions to decree .....	15.4.1
Service by publication.....	15.4.1

	<u>Rule No.</u>
Motion court procedure.....	15.1.1
Petition to confirm consent including step-parent adoption.....	15.5.1
Petition to terminate putative father's rights under § 2503(d) and § 2504(c)	
Department of Vital statistics certification.....	15.4.2
Notice.....	15.4.2
Petition generally.....	15.4.2
Procedure.....	15.4.2
Step-parent.....	15.5.1
Voluntary relinquishment of parental rights	
Included in petition to terminate putative father's rights.....	15.4.2
Procedure.....	15.1.1
<b>ADVERTISEMENT</b>	
Accounts.....	6.6.1
Determination of title to real property.....	6.11.2
Grant of letters.....	6.1.3
Involuntary termination of parental rights.....	15.4.1
Legal periodical.....	1.2.10
Public sale of real property.....	5.1.1
Return of notice by publication.....	5.4.1
Settlement of small estate.....	12.0.1
<b>AFFIDAVITS AND VERIFICATIONS</b>	
Accounts.....	6.1.1, 6.1.3
Audit statement.....	6.9.1
Guardianship.....	14.2.1, 14.2.3
Involuntary termination of parental rights.....	15.4.1
Private sale of real property.....	12.10.2
Return of service of notice.....	5.4.1, 5.4.2
Sureties.....	1.2.4
Unknown or non-resident distributees.....	6.9.3, 13.3.1
<b>AGREEMENT OF COUNSEL</b>	
Depositions, discovery and production of documents.....	3.6.1
Pre-trial conference.....	3.7.1
<b>ALLOWANCE</b>	
Minor's estate.....	12.5.4
<b>ANSWER</b>	
Answer to preliminary objections.....	3.2.1
Disposition of pleadings.....	3.2.2
Failure to answer.....	3.2.2
Form of pleadings.....	3.4.1
Pleadings allowed.....	3.2.1
Required when new matter asserted.....	3.2.1
Service of pleadings.....	3.5.1
<b>APPEAL</b>	
Effect of exceptions.....	7.1.6
Final order after exceptions.....	7.1.4
From Register of Wills	
Non pros.....	10.8.2(c)
<b>APPOINTMENTS</b>	
Auditors.....	8.1.1
Certificate of appointment of fiduciary.....	1.2.5
Examiners.....	9.1.1
Guardians	
Emergency Guardian.....	14.2.4
Guardian of incapacitated person.....	14.1.1, 14.2.1
Guardian of minor.....	12.5.1, 12.5.2
Successor guardian.....	14.2.6
Masters.....	8.1.1
Successor co-trustee.....	12.6.2
Trustee.....	12.6.1

	<u>Rule No.</u>
<b>APPRAISEMENTS</b>	
Included in petition for family exemption .....	12.1.1
Inalienable property private sale .....	12.12.1
Petition to fix or waive additional security .....	12.10.5
Public sale of real property .....	12.9.1
<b>ARGUMENT</b>	
Briefs .....	3.5.1, 7.1.5
Exceptions .....	7.1.5
Time fixed .....	1.2.2
<b>ATTORNEY GENERAL</b>	
Determination of title to real property .....	6.11.2
Settlement of small estate .....	12.0.1
<b>ATTORNEY IN FACT</b>	
Guardianship petition .....	14.2.1
Notice of guardianship hearing .....	14.1.1
<b>ATTORNEYS</b>	
Appearance .....	1.2.3
Auditors and masters .....	8.1.1
Certification that receipt for distribution unavailable .....	6.1.4
Discovery agreements .....	3.6.1, 3.7.1
Notice of representation of incapacitated person .....	14.2.1
Notice to counsel of record .....	1.2.3
Petition to Terminate parental rights or confirm consent .....	15.4.2, 15.5.1
Service of pleadings upon .....	1.2.3, 3.5.1
Signature and verification .....	3.4.1
Surety .....	1.2.3
Trustee account .....	1.2.6
<b>AUDITORS</b>	
Appointment .....	8.1.1, 8.1.2
Compensation .....	8.8.2
Court confirmation of report .....	8.7.1
Exceptions .....	8.6.1, 8.7.1
Hearings .....	8.1.2
Reports .....	8.1.2, 8.6.1
Security for compensation and expenses .....	8.8.1
<b>AUDITS</b>	
Accounts	
Advertisement .....	6.6.1
Form .....	6.1.1
Objections .....	6.10.1
Audit list	
Attendance at audit .....	6.4.3
Date held .....	1.2.1
Filing for audit list .....	6.4.1
Postponement of audit .....	6.4.2
Audit statement .....	6.9.1
Distributees	
Special situations .....	13.3.1
Unknown or non-resident .....	6.9.2, 6.9.3
Exceptions .....	7.1.2
Guardian	
Incapacitated person .....	14.2.5
Minor .....	6.2.2
<b>BENEFICIARIES</b>	
Unknown or non-resident distributees .....	6.9.2
Settlement of small estate .....	12.0.1

**Rule No.**

**BONDS**

Appeal from Register of Wills  
 Non pros for failure to present bond . . . . . 10.8.2(c)  
 Auditors and masters . . . . . 8.8.1  
 Guardians . . . . . 14.2.5  
 Inalienable property  
 Mortgage . . . . . 12.12.1  
 Private sale . . . . . 12.12.1  
 Public sale . . . . . 12.12.1  
 Minor's estate  
 Guardian's bond . . . . . 12.5.2  
 Sale or mortgage of minor's real property . . . . . 12.5.3  
 Real property  
 Petition to fix or waive additional security . . . . . 12.10.5  
 Private sale . . . . . 12.10.4  
 Public sale . . . . . 12.9.1, 12.9.4  
 Surety on additional bond . . . . . 12.10.5  
 Sureties  
 Attorney as surety . . . . . 1.2.3  
 Certificate of appointment . . . . . 1.2.5  
 Corporate sureties and fiduciaries . . . . . 1.2.4, 1.2.7  
 Duty of fiduciary and surety . . . . . 1.2.4  
 Release of fiduciary and surety . . . . . 1.2.8

**BRIEFS**

Exceptions . . . . . 7.1.5  
 Filing and serving . . . . . 3.1.5

**BUSINESS OF COURT**

Arguments . . . . . 1.2.1  
 Audit List . . . . . 1.2.1  
 Definitions . . . . . 2.3.1  
 Legal Periodical . . . . . 1.2.10  
 Motion Court . . . . . 1.2.1  
 Return days . . . . . 1.2.11

**CAPTION**

Pleadings . . . . . 3.4.1

**CERTIFIED CASES**

Pleadings . . . . . 10.8.2(d)

**CITATION**

Guardianship  
 Emergency guardianship . . . . . 14.2.4  
 Incapacitated person . . . . . 14.1.1  
 Inalienable property . . . . . 12.12.2  
 Involuntary termination of parental rights . . . . . 15.4.1  
 Pleadings . . . . . 3.2.1, 3.4.1  
 Register of Wills  
 Enforcement of decrees . . . . . 10.8.2(g)  
 Failure to comply with citation . . . . . 10.8.2(f)

**CLAIMANTS**

Account notice to unpaid creditors . . . . . 6.1.3, 6.3.1  
 Audit statement notice to unpaid creditors . . . . . 6.9.1  
 Determination of title to real property . . . . . 6.11.2  
 Guardians of minor's estates . . . . . 6.2.2  
 Settlement of small estates . . . . . 12.0.1

**COMPENSATION**

Auditor . . . . . 8.8.2  
 Examiner . . . . . 9.1.3  
 Master . . . . . 8.8.2  
 Security for . . . . . 8.8.1

	<u>Rule No.</u>
<b>CONFIRMATION</b>	
Account	
Audit .....	6.4.2
Guardian of minor's estate .....	6.2.2
Notice to parties in interest .....	6.3.1
Release of fiduciary and surety .....	1.2.8
Adoption	
Petition to confirm consent .....	15.5.1
Petition to terminate putative father's rights .....	15.4.2
Procedure .....	15.1.1, 15.5.1
Step-parents .....	15.5.1
Advertisement .....	6.11.2
Family exemption valuation of property .....	12.1.1
Master or auditor's report .....	8.7.1
Real property	
Inalienable property .....	12.12.1
Private sale .....	12.10.4
Public sale .....	5.4.2, 12.9.4
Schedule of distribution	
Real property .....	6.11.1
Title to property .....	6.11.1
Settlement of small estates .....	6.1.5
Unpaid creditors .....	6.3.1
<b>CONSENTS</b>	
Adoption .....	15.1.1, 15.4.2, 15.5.1
Auditors and masters .....	8.1.1
Family exemption .....	12.1.1
General requirements .....	3.4.1
Inalienable property .....	12.12.1
Mortgagee .....	12.9.2
Trustee .....	12.6.1
<b>CONSTRUCTION AND APPLICATION OF RULES</b>	
Definitions .....	2.3.1
<b>CORPORATIONS</b>	
Fiduciaries	
Bond .....	1.2.7
Certificate of approval .....	1.2.7
Release .....	1.2.8
Receipts for disbursements .....	6.1.4
Sureties	
Certificate of insurance .....	1.2.4
Duties .....	1.2.4
<b>COSTS</b>	
Auditor or master expenses .....	8.8.1
Enforcement of decrees .....	10.8.2(g)
Settlement of small estates .....	12.0.1
<b>COUNSEL</b>	
Appearance .....	1.2.3
Auditors and masters .....	8.1.1
Certification that receipt for distribution unavailable .....	6.1.4
Discovery agreements .....	3.6.1, 3.7.1
Notice of representation of incapacitated person .....	14.2.1
Notice to counsel of record .....	1.2.3
Petition to terminate parental rights or confirm consent .....	15.4.2, 15.5.1
Service of pleadings upon .....	1.2.3, 3.5.1
Signature and verification .....	3.4.1
Surety .....	1.2.3
Trustee account .....	1.2.6
<b>COURT</b>	
Audit Court .....	1.2.1, 6.4.2, 6.4.3
Definitions .....	2.3.1

	<u>Rule No.</u>
Motion Court .....	1.2.1
Pleadings allowed .....	3.2.1
Pre-trial conference .....	3.7.1
Return days .....	1.2.11
<b>CREDITORS</b>	
Account notice to unpaid creditors .....	6.1.3, 6.3.1
Audit statement notice to unpaid creditors .....	6.9.1
Determination of title to real property .....	6.11.2
Guardians of minor's estates .....	6.2.2
Settlement of small estates .....	12.0.1
<b>DECLARATORY JUDGMENT</b>	
Pleadings .....	3.2.1
<b>DECREES</b>	
Adoption	
Petition to confirm consent .....	15.5.1
Termination of parental rights .....	15.4.1, 15.4.2
Enforcement .....	10.8.2(g)
Exceptions	
Additional exceptions .....	7.1.5
Effect .....	7.1.4, 7.1.6
Finality of decree .....	7.1.2, 7.1.3
Form .....	3.4.1, 7.1.5
Guardianship .....	14.1.1
Procedure .....	7.1.5
<b>DEEDS</b>	
Sale of real property by personal representative .....	12.9.1
Sale of real property by trustee .....	12.9.1
<b>DEPARTMENT OF REVENUE</b>	
Unknown or non-resident distributees, report of fiduciary .....	6.9.2
<b>DEPOSITIONS</b>	
Depositions, discovery and production of documents .....	3.6.1
Perpetuation of testimony .....	3.6.2
<b>DISBURSEMENTS</b>	
Accounts	
Form generally .....	6.1
Execution and verification .....	6.1.3
Guardians of minors .....	6.2.2
Receipts .....	6.1.4
Sales between estate and accountant .....	6.1.2
Small estates .....	6.1.5
Additional receipts in statement of proposed distribution .....	6.9.4
Audit statement .....	6.9.1
Certification by counsel that receipt is unavailable .....	6.1.4
Filing of receipts .....	6.1.4
Finality of certain orders, decrees and adjudications .....	7.1.2
Guardian of incapacitated person .....	14.2.5
Minor's accounts .....	6.2.2
Objections to statement of proposed distribution .....	6.10.1
Real property .....	6.11.1
Report of fiduciary .....	6.9.3
Settlement of small estates .....	12.0.1
Unknown or non-resident distributees .....	6.9.2, 13.3.1
<b>DISCOVERY</b>	
Depositions .....	3.6.1
Perpetuation of testimony .....	3.6.2
Production of documents .....	3.6.1
Will contest .....	3.6.1

Rule No.**DISTRIBUTEES**

Audit statement .....	6.9.1
Notice to parties in interest.....	6.3.1
Receipts for disbursement .....	6.1.4
Report of fiduciary .....	6.9.3
Schedule of distribution .....	6.11.1
Unknown or non-resident.....	6.9.2, 13.3.1

**DISTRIBUTION**

Accounts	
Form generally .....	6.1
Execution and verification.....	6.1.3
Guardians of minors .....	6.2.2
Receipts.....	6.1.4
Sales between estate and accountant .....	6.1.2
Small estates.....	6.1.5
Additional receipts and disbursements .....	6.9.4
Audit statement .....	6.9.1
Certification by counsel that receipt is unavailable .....	6.1.4
Finality of certain orders, decrees and adjudications.....	7.1.2
Guardian of incapacitated person .....	14.2.5
Minor's accounts.....	6.2.2
Objections to statement of proposed distribution .....	6.10.1
Real property.....	6.11.1
Report of fiduciary .....	6.9.3
Settlement of small estates .....	12.0.1
Unknown or non-resident distributees.....	6.9.2, 13.3.1

**DURABLE POWER OF ATTORNEY**

Guardianship petition.....	14.2.1
Notice of guardianship hearing .....	14.1.1

**EXAMINERS**

Appointment .....	9.1.1
Compensation .....	9.1.3
Findings of fact.....	9.1.2
Special duties .....	9.1.2

**EXCEPTIONS**

Additional exceptions .....	7.1.5
Form.....	7.1.5
Procedure .....	7.1.5
Service.....	7.1.5
Time for filing .....	7.1.5
Appeal.....	7.1.4, 7.1.6
Auditors and masters .....	8.6.1, 8.7.1
Definitions .....	2.3.1
Effect of exceptions	
Adjudications, orders and decrees .....	7.1.6
Appeal .....	7.1.4, 7.1.6
Decree nisi .....	7.1.4
Filing.....	7.1.1
Finality of certain orders, decrees and adjudications	
Adjudication approving account, audit statement or statement of proposed distribution .....	7.1.2
Claim for family exemption.....	7.1.2
Other petitions where notice given .....	7.1.2
Public or private sale of real estate.....	7.1.2
Settlement of estate, guardianship or trust administration.....	7.1.2
Settlement of small estate .....	7.1.2
Finality of other orders and decrees .....	7.1.3
Involuntary termination decree .....	15.4.1
Notice to parties in interest.....	7.1.2
Orders and decrees	
Argument or hearing.....	7.1.5
Briefs.....	7.1.5

	<u>Rule No.</u>
Procedure following exceptions	
Other exceptions.....	7.1.7
Form.....	7.1.5
Procedure.....	7.1.5
Service.....	7.1.5
<b>EXHIBITS</b>	
Determination of title to real property.....	6.11.2
Real Property	
Inalienable property.....	12.12.1
Mortgage.....	12.11.1
Private sale.....	12.10.2
Public sale.....	12.9.2
Settlement of small estates.....	12.0.1
Trustee appointment.....	12.6.1
<b>EXPENSES</b>	
Auditor or master.....	8.8.1
Enforcement of decrees.....	10.8.2(f)
Settlement of small estates.....	12.0.1
<b>FAMILY EXEMPTION</b>	
Finality of claim.....	7.1.2
General requirements.....	12.1.1
Notice.....	12.1.1
Settlement of small estates.....	12.0.1
<b>FIDUCIARIES</b>	
Appointment of successor co-fiduciary.....	12.6.2
Corporate fiduciaries.....	1.2.7
Examiners.....	9.1.1, 9.1.2
Inalienable property.....	12.12.1, 12.12.3
Individual fiduciaries.....	1.2.6
Minor's estate	
Guardian's bond.....	12.5.2
Sale or mortgage of minor's real property.....	12.5.3
Person under incapacity with no fiduciary.....	5.2.1
Real property	
Mortgage.....	12.11.1
Petition to fix or waive additional security.....	12.10.5
Private sale.....	12.10.1, 12.10.3, 12.10.4
Public sale.....	12.9.1, 12.9.4
Surety on additional bond.....	12.10.5
Sureties	
Attorney as surety.....	1.2.3
Certificate of appointment.....	1.2.5
Corporate sureties and fiduciaries.....	1.2.4, 1.2.7
Duty of fiduciary.....	1.2.4
Individual surety.....	1.2.4
Release of fiduciary and surety.....	1.2.8
Unknown or non-resident distributees.....	6.9.2, 6.9.3, 13.3.1
<b>FILING</b>	
Accounts	
Audit generally.....	6.4.1, 6.4.2
Audit statement.....	6.9.1
Docketing.....	6.6.2
Generally.....	6.1.3
Objections.....	6.10.1
Adoption procedure.....	15.1.1, 15.4.2, 15.5.1
Appeal from register of wills	
Auditors and masters.....	8.6.1, 8.8.1
Bond	
Guardian of minor's estate.....	12.5.2
Individual and corporate surety.....	1.2.4, 1.2.7
Exceptions	
Additional exceptions.....	7.1.5
Auditor and masters report.....	8.6.1



	<u>Rule No.</u>
Effect .....	7.1.4, 7.1.6
Finality of orders .....	7.1.2, 7.1.3
Form and service .....	7.1.5
Generally .....	7.1.1, 7.1.2
Guardianship petitions .....	14.1.1, 14.2.4
Pleadings .....	3.5.1
Receipts for disbursement .....	6.1.4
Small estates .....	6.1.5
<b>GUARDIANSHIP</b>	
Adoption notice .....	15.4.2, 15.5.1
Emergency guardianship	
Notice .....	14.2.4
Procedure .....	14.2.4
Testimony .....	14.2.4
Hearing	
Date .....	14.1.1
Evidence .....	14.2.1
Physician's affidavit .....	14.2.1
Presence of incapacitated person .....	14.2.1
Proof of service .....	14.2.3, 14.3.1
Modification of guardianship	
Accounting .....	14.2.5, 14.3.1
Additional assets .....	14.2.5
Adjudication of capacity .....	14.3.1
Death of ward .....	14.2.5
Discharge of guardian .....	14.2.6, 14.3.1
Review hearing .....	14.2.6
Petition for appointment of guardian of incapacitated person	
General requirements .....	14.2.1
Notice of representation .....	14.2.1
Post adjudication duties	
Accounting .....	14.2.5, 14.3.1
Additional assets .....	14.2.5
Annual report .....	14.2.5
Death of ward .....	14.2.5
Segregation of assets .....	1.2.6
Testamentary writings, living wills and advanced health care directive .....	14.2.5
Procedure	
Citation .....	14.1.1
Emergency guardianship .....	14.2.4
General requirements .....	14.2.1
Hearing date .....	14.1.1
Notice to incapacitated person with no fiduciary .....	5.2.1
Service of petition .....	14.1.1
Minors	
Account of guardian .....	6.2.2
Allowance .....	12.5.4
Appearance of minor .....	12.5.1
Bond .....	12.5.2
Discharge of guardian .....	6.2.2
Disposition of assets .....	12.5.3
Mortgage or sale of real property .....	12.5.3
Restricted account .....	12.5.2
Real property	
Mortgage of real property .....	12.11.1
Private sale .....	12.10.1, 12.10.2, 12.10.4
Public sale .....	12.9.1, 12.9.2, 12.9.4
<b>HEARINGS</b>	
Adoption .....	15.1.1
Auditor or Master .....	8.1.2, 8.7.1
Briefs .....	3.5.1, 7.1.5
Demand for jury trial .....	10.8.2(e)
Depositions, discovery and production of documents .....	3.6.1
Exceptions .....	7.1.5
Guardianship of incapacitated person .....	14.1.1
Objections at the time of audit .....	6.4.2

	<u>Rule No.</u>
Perpetuation of testimony .....	3.6.2
Pre-trial conference .....	3.7.1
<b>HEIRS</b>	
Determination of title to real property .....	6.11.2
Investigation to locate .....	6.9.3
Settlement of small estates .....	12.0.1
Unknown distributee .....	13.3.1
<b>INALIENABLE PROPERTY</b>	
Mortgage .....	12.12.1
Notice to parties .....	12.12.2
Private sale .....	12.12.1
Public sale .....	12.12.1
Real estate or fiduciaries in other counties .....	12.12.3
<b>INCAPACITATED PERSONS</b>	
Emergency guardianship	
Notice .....	14.2.4
Procedure .....	14.2.4
Testimony .....	14.2.4
Hearing	
Date .....	14.1.1
Evidence and physician's affidavit .....	14.2.1
Presence of incapacitated person .....	14.2.1
Proof of service .....	14.2.3, 14.3.1
Modification of guardianship	
Accounting .....	14.2.5, 14.3.1
Additional assets .....	14.2.5
Adjudication of capacity .....	14.3.1
Death of ward .....	14.2.5
Discharge of guardian .....	14.2.6, 14.3.1
Review hearing .....	14.2.6
Petition for appointment of guardian of incapacitated person	
General requirements .....	14.2.1
Notice of guardianship proceedings .....	14.1.1
Notice of representation .....	14.2.1
Persons to be served .....	14.1.1
Post adjudication duties	
Accounting .....	14.2.5, 14.3.1
Additional assets .....	14.2.5
Annual report .....	14.2.5
Death of ward .....	14.2.5
Segregation of assets .....	1.2.6
Testamentary writings, living wills and advanced health care directive .....	14.2.5
Procedure	
Citation .....	14.1.1
Emergency guardianship .....	14.2.4
General requirements .....	14.2.1
Hearing date .....	14.1.1
Notice to incapacitated person with no fiduciary .....	5.2.1
Service of petition .....	14.1.1
Real property	
Inalienable property .....	12.12.1
Mortgage of real property .....	12.11.1
Private sale .....	12.10.1, 12.10.2, 12.10.4
Public sale .....	12.9.1, 12.9.2, 12.9.4
Settlement	
Committee comment .....	12.5.5
Compromise or discontinuance .....	12.5.5
Contents of petition .....	12.5.5
Filing of petition .....	12.5.5
Form of petition .....	12.5.5
Manner of presentment .....	12.5.5
Notice of hearing .....	12.5.5

Rule No.**INVENTORY**

Family exemption .....	12.1.1
Guardianship of incapacitated person .....	14.2.5
Personal representative additional security .....	12.10.5
Public sale of real property .....	12.9.1
Settlement of small estates .....	12.0.1

**INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

Involuntary termination of parent whose identity or whereabouts cannot be ascertained	
Affidavit of diligent search .....	15.4.1
Exceptions to decree .....	15.4.1
Service by publication .....	15.4.1
Motion court procedure .....	15.1.1
Petition to terminate putative father's rights under § 2503(d) and § 2504(c)	
Department of Vital statistics certification .....	15.4.2
Notice .....	15.4.2
Petition generally .....	15.4.2
Procedure .....	15.4.2

**JUDGMENT**

Non pros for failure to post appeal bond .....	10.8.2(c)
--	-----------

**JURY**

Demand for jury trial .....	10.8.2(e)
-----------------------------	-----------

**LEGAL JOURNAL**

Designation of legal periodical .....	1.2.10
---------------------------------------	--------

**MASTERS**

Appointment .....	8.1.1, 8.1.2
Compensation .....	8.8.2
Court confirmation of report .....	8.7.1
Exceptions .....	8.6.1, 8.7.1
Hearings .....	8.1.2
Reports .....	8.1.2, 8.6.1
Security for compensation and expenses .....	8.8.1

**MINORS**

Estate	
Account by guardian of the estate .....	6.2.2
Allowance .....	12.5.4
Amount not exceeding statute .....	12.5.3
Distribution of balance .....	6.2.2
Mortgage or sale of real property .....	12.5.3, 12.9.1
Restricted account .....	12.5.2
Segregation and designation of assets .....	1.2.6
Guardianship	
Appearance before the court .....	12.5.1
Appointment of guardian .....	12.5.1
Discharge of guardian .....	6.2.2
Settlement	
Committee comment .....	12.5.5
Compromise or discontinuance .....	12.5.5
Contents of petition .....	12.5.5
Filing of petition .....	12.5.5
Form of petition .....	12.5.5
Manner of presentment .....	12.5.5
Notice of hearing .....	12.5.5
Settlement of small estates .....	12.0.1

**MORTGAGES**

Inalienable property .....	12.12.1
Petition for sale or mortgage of real property	
Additional requirements .....	12.11.1
Consent of mortgagee as exhibit .....	12.9.2
Guardian of incapacitated person .....	12.9.1

	<u>Rule No.</u>
Minor's estate .....	12.5.3
Security .....	12.10.5
<b>MOTION COURT</b>	
Cover sheet .....	3.4.1
Family / orphans' court administrator .....	14.1.1, 15.1.1
Notice requirements .....	3.4.1
Schedule .....	1.2.1
<b>MOTIONS</b>	
Appointment of auditor or master .....	8.1.1
Form generally .....	3.4.1
Presentation	
Family / orphans' court administrator .....	14.1.1, 15.1.1
Motion court .....	1.2.1
Pre-trial conference .....	3.7.1
Service by publication .....	15.4.1
<b>NEWSPAPERS</b>	
Accounts .....	6.6.1
Determination of title to real property .....	6.11.2
Grant of letters .....	6.1.3
Involuntary termination of parental rights .....	15.4.1
Legal periodical .....	1.2.10
Public sale of real property .....	5.1.1
Return of notice by publication .....	5.4.1
Settlement of small estates .....	12.0.1
<b>NEXT OF KIN</b>	
Adjudication of capacity .....	14.3.1
Incapacitated person with no fiduciary .....	5.2.1
Guardian's petition to sell minor's real property .....	12.9.1
<b>NON-RESIDENT DISTRIBUTEES</b>	
Contents of fiduciary's report .....	6.9.3
Report by fiduciary at audit of account .....	6.9.2
<b>NOTICE</b>	
Accounts and distribution	
Advertisement .....	6.6.1
Audit court .....	6.4.2
Audit statement .....	6.9.1
Guardians of minors .....	6.2.2
Parties in interest .....	6.3.1
Unpaid creditors .....	6.1.3
Action upon default of notice .....	10.8.2(f) 10.8.2(g)
Adoption	
Generally .....	15.1.1
Petition to confirm consent .....	15.5.1
Petition to terminate parental rights .....	15.4.2
Unknown putative father .....	15.4.1
Auditor and master .....	8.1.2, 8.6.1
Counsel of record .....	1.2.3
Finality of order .....	7.1.2
Guardianship	
Adjudication of capacity .....	14.3.1
Emergency petition .....	14.2.4
General requirements .....	14.1.1
Incapacitated person .....	14.1.1
Notice of representation .....	14.2.1
Legal Periodical .....	1.2.10
Legatees, devisees and beneficiaries of dispositive instruments .....	5.6.1
Method of serving notice	
Person under incapacity with no fiduciary .....	5.2.1
Presumed decedent and unascertained persons .....	5.2.2
Public sale of real property .....	5.1.1
Notice to plead .....	3.4.1
Return of Notice	

	<b>Rule No.</b>
Additional requirements .....	5.4.1
Public sale of real property .....	5.4.2
<b>Special Petitions</b>	
Family exemption .....	12.1.1
Inalienable property .....	12.12.1
Mortgage of real property .....	12.11.1
Private sale .....	12.10.2
Public sale .....	12.9.1, 12.9.2, 12.9.3
Settlement of small estates .....	12.0.1
Title to real property .....	6.11.2
<b>OBJECTIONS</b>	
Accounts and distribution	
Audit statement .....	6.9.1
Hearing on objections .....	6.4.2
Notice to file objections .....	6.9.1
Objections to account or statement of proposed distribution .....	6.10.1
Definition .....	2.3.1
Finality of certain orders, decrees and adjudications .....	7.1.2
Notice to parties in interest .....	7.1.2
Waiver of objections .....	7.1.2
Pleadings	
Answer to preliminary objections .....	3.2.2
Failure to answer preliminary objections .....	3.2.2
Preliminary objections .....	3.2.1
Public sale of real property .....	12.9.3
<b>OFFICIAL EXAMINERS</b>	
Appointment .....	9.1.1
Compensation .....	9.1.3
Findings of fact .....	9.1.2
Special duties .....	9.1.2
<b>ORDERS</b>	
Exceptions to orders and decrees .....	7.1.3, 7.1.5
Finality of certain orders	
Adjudication approving account .....	7.1.2
Claim for family exemption .....	7.1.2
Public or private sale of real estate .....	7.1.2
Settlement of guardianship or trust administration .....	7.1.2
Settlement of small estate .....	7.1.2
Special order	
Attorney acting as surety .....	1.2.3
Depositions, discovery and production of documents .....	3.6.1
Examiners .....	9.1.1
Notice to absentee, presumed decedent or unascertained person .....	5.2.2
Notice to person under incapacity with no fiduciary .....	15.2.1
Perpetuation of testimony .....	3.6.2
Release and substitution of surety .....	1.2.8
Stay of order .....	7.1.4, 7.1.6
<b>PERPETUATION OF TESTIMONY</b>	
General rule .....	3.6.2
<b>PERSONAL PROPERTY</b>	
Family exemption .....	12.1.1
Minor's estates .....	12.5.3, 12.5.4
Settlement of small estates .....	12.0.1
<b>PERSONAL REPRESENTATIVE</b>	
Discharge .....	12.7.1
Family exemption .....	12.1.1
Petition for private sale of real property	
Contents of petition .....	12.10.1
Exhibits .....	12.10.2
Finality of order .....	7.1.2
Higher offer .....	12.10.3

	<u>Rule No.</u>
Mortgage.....	12.11.1
Security.....	12.10.4, 12.10.5
Petition for public sale of real property	
Contents of petition.....	12.9.1
Exhibits.....	12.9.2
Finality of order.....	7.1.2
Mortgage.....	12.11.1
Notice.....	5.1.1
Personal representative, trustee, guardian.....	12.9.1
Return of notice.....	5.4.2
Security.....	12.9.4
Settlement of small estates.....	12.0.1
<b>PETITIONS</b>	
Adoption	
Confirmation of consent including step-parent.....	15.5.1
Form of petition generally.....	15.1.1
Termination of parental rights.....	15.4.2
Unknown putative father.....	15.4.1
Appeal from register of wills	
Enforcement of decree.....	10.8.2(f)
Form of petition.....	10.2.1
Appointment of auditor or master.....	8.1.1
Citation or declaratory relief.....	3.2.1
Declaration of title to real property.....	6.11.2
Deposition, discovery and production of documents.....	3.6.1
Failure to answer.....	3.2.2
Family exemption.....	12.1.1
Finality of certain orders, decrees and adjudications.....	7.1.2
Form generally.....	3.4.1
Guardianship	
Adjudication of capacity.....	14.3.1
Emergency.....	14.2.4
Form of petition.....	14.2.1
Modification.....	14.2.6
Procedure.....	14.1.1
Minor's estate	
Allowance.....	12.5.4
Appearance before the court.....	12.5.1
Disposition of assets.....	12.5.3
Mortgage or sale of real property.....	12.5.3
Pleadings generally.....	3.2.1
Real property	
Inalienable property.....	12.12.1
Mortgage.....	12.11.1
Private sale.....	12.10.1, 12.10.2
Public sale.....	12.9.1, 12.9.2
Waive or fix additional security.....	12.10.5
Return of notice.....	5.4.1, 5.4.2
Settlement of small estates	
By personal representative.....	6.1.5
Finality of orders, decrees and adjudications.....	7.1.2
Form of petition.....	12.0.1
Trustee	
Appointment.....	12.6.1
Successor co-trustee.....	12.6.2
<b>PLEADINGS</b>	
Adoption.....	15.1.1
Briefs.....	3.5.1
Certified cases.....	10.8.2(d)
Depositions, discovery and production of documents.....	3.6.1
Disposition of Pleadings	
Failure to answer petition.....	3.2.2
Failure to answer preliminary objections.....	3.2.2
Failure to reply.....	3.2.2
General practice and procedure.....	3.2.1

	<u>Rule No.</u>
Form of pleadings	
Attorney supreme court identification number .....	3.4.1
Consents .....	3.4.1
Cover sheet .....	3.4.1
Decree .....	3.4.1
Endorsements .....	3.4.1
Paper size .....	3.4.1
Typing .....	3.4.1
Notice to plead .....	3.4.1
Signature and Verification .....	3.4.1
Guardianship of incapacitated persons .....	14.1.1
Notice requirements	
Certification of notice .....	3.4.1
Contents of notice .....	3.4.1
Failure to give notice .....	3.4.1
Length of notice required .....	3.4.1
Perpetuation of testimony .....	3.6.2
Pleadings allowed	
Answer .....	3.2.1
Answer to preliminary objections .....	3.2.1
Citation .....	3.2.1
Declaratory relief .....	3.2.1
New Matter .....	3.2.1
Petition .....	3.2.1
Preliminary objections .....	3.2.1
Reply .....	3.2.1
Pre-trial conference	
Admissions of fact and documents .....	3.7.1
Agreements of counsel .....	3.7.1
Amendments to pleadings .....	3.7.1
Service of copies .....	3.5.1
<b>POWER OF ATTORNEY</b>	
Guardianship petition .....	14.2.1
Notice of guardianship hearing .....	14.1.1
<b>PRESUMED DECEDENTS</b>	
Method of serving notice .....	5.2.2
<b>PRIVATE SALE OF REAL PROPERTY</b>	
Committee comment .....	12.10.1
Contents of petition .....	12.10.1
Exhibits .....	12.10.2
Finality of order .....	7.1.2
Higher offer .....	12.10.3
Inalienable property .....	12.12.1
Mortgage .....	12.11.1
Petition to fix or waive security .....	12.10.5
Sale between estate and accountant .....	6.1.2
Security .....	12.10.4, 12.10.5
<b>PROBATE</b>	
Definition Probate, Estates and Fiduciaries Code (PEF) .....	2.3.1
Notice to named individuals in dispositive instruments .....	5.6.1
<b>PRODUCTION OF DOCUMENTS</b>	
Depositions and discovery .....	3.6.1
Production of documents .....	3.6.1
Will contest .....	3.6.1
<b>PUBLIC SALE OF REAL PROPERTY</b>	
Confirmation .....	12.9.2
Contents of petition .....	12.9.1
Exhibits .....	12.9.2
Finality of order .....	7.1.2
Inalienable property .....	12.12.1
Mortgage .....	12.12.1
Notice .....	5.1.1, 12.9.2

	<u>Rule No.</u>
Personal representative, trustee, guardian .....	12.9.1
Petition to fix or waive security .....	12.10.5
Return of notice .....	5.4.2
Schedule of distribution .....	6.11.2
Security .....	12.9.4
<b>PUBLICATION</b>	
Accounts .....	6.6.1
Determination of title to real property .....	6.11.2
Grant of letters .....	6.1.3
Involuntary termination of parental rights .....	15.4.1
Legal periodical .....	1.2.10
Public sale of real property .....	5.1.1
Return of notice by publication .....	5.4.1
<b>REAL PROPERTY</b>	
Determination of title .....	6.11.2
Minor's estate .....	12.5.3
Private sale of real property	
Contents of petition .....	12.10.1
Exhibits .....	12.10.2
Finality of order .....	7.1.2
Higher offer .....	12.10.3
Inalienable property .....	12.12.1
Mortgage .....	12.11.1
Petition to fix or waive security .....	12.10.5
Sale between estate and accountant .....	6.1.2
Security .....	12.10.4, 12.10.5
Public sale of real property	
Confirmation .....	12.9.2
Contents of petition .....	12.9.1
Exhibits .....	12.9.2
Finality of order .....	7.1.2
Inalienable property .....	12.12.1
Mortgage .....	12.12.1
Notice .....	5.1.1, 12.9.2
Personal representative, trustee, guardian .....	12.9.1
Petition to fix or waive security .....	12.10.5
Return of notice .....	5.4.2
Schedule of distribution .....	6.11.2
Security .....	12.9.4
<b>RECEIPTS</b>	
Account .....	6.1.4
Additional receipts in statement of proposed distribution .....	6.9.4
Certification by counsel that receipt is unavailable .....	6.1.4
Filing of receipts .....	6.1.4
Registered or certified mail .....	5.4.1
<b>RECOMMENDATIONS</b>	
Compensation of auditor or master .....	8.8.2
Examiners .....	9.1.2
<b>RECORDS</b>	
List of corporate sureties .....	1.2.4
Removal from Clerk's office .....	1.2.3
<b>REGISTER OF WILLS</b>	
Appeal procedure	
Certified cases .....	10.8.2(d)
Jury trial .....	10.8.2(e)
Non pros .....	10.8.2(c)
Decrees	
Enforcement .....	10.8.2(f)
Sequestration of property .....	10.8.2(f)
Writ of attachment .....	10.8.2(f)
Forms .....	3.4.1, 6.1.1



	<u>Rule No.</u>
<b>REPLY</b>	
Disposition of pleadings .....	3.2.2
Failure to reply .....	3.2.2
Form of pleadings .....	3.4.1
Pleadings allowed .....	3.2.1
Required when new matter asserted .....	3.2.1
Service of pleadings .....	3.5.1
<b>REPORTS</b>	
Adoption including step-parent .....	15.4.2, 15.5.1
Auditors and masters .....	8.1.2, 8.6.1, 8.7.1
Examiners .....	9.1.1, 9.1.2
Guardian of incapacitated person .....	14.2.5, 14.3.1
Sales and purchases between estate and accountant .....	6.1.1
Unknown or non-resident distributees report of investigation .....	6.9.2, 6.9.3, 13.3.1
<b>RESIDENCE</b>	
Adoption	
Confirmation of consent to adoption including step-parent .....	15.5.1
Involuntary termination of parental rights .....	15.4.1, 15.4.2
Counsel .....	3.4.1
Determination of title to real property .....	6.11.2
Family exemption .....	12.1.1
Guardianship	
Adjudication of capacity .....	14.3.1
Minor's estates .....	12.5.4
Petition .....	14.2.1
Public sale of real property .....	12.9.1
Legatees, devisees and beneficiaries .....	5.6.1
Public sale of real property	
Guardian .....	12.9.1
Personal representative .....	12.9.1
Public sale .....	5.4.2
Return of notice .....	5.4.1
Trustee .....	12.9.1
Service of pleadings .....	1.2.3
Settlement of small estates .....	12.0.1
<b>RETURN</b>	
Public sale of real property	
Approval or confirmation .....	5.4.2, 12.9.3
Return of sale .....	5.1.1
Security .....	12.9.4
Return days .....	1.2.11
Return of notice	
Personal service .....	5.4.1
Publication .....	5.4.1
Registered or certified mail .....	5.4.1
<b>SALARY</b>	
Auditor .....	8.8.2
Examiner .....	9.1.3
Master .....	8.8.2
Security for .....	8.8.1
<b>SALES</b>	
Minor's estate .....	12.5.3
Private sale of real property	
Contents of petition .....	12.10.1
Exhibits .....	12.10.2
Finality of order .....	7.1.2
Higher offer .....	12.10.3
Inalienable property .....	12.12.1
Mortgage .....	12.11.1
Sale between estate and accountant .....	6.1.2
Security .....	12.10.4, 12.10.5

**Rule No.**

Public sale of real property	
Contents of petition .....	12.9.1, 12.9.2
Finality of order .....	7.1.2
Inalienable property .....	12.12.1
Mortgage.....	12.11.1, 12.12.1
Notice.....	5.1.1
Personal representative, trustee, guardian.....	12.9.1
Return of notice .....	5.4.2
Security.....	12.9.4
<b>SECURITY</b>	
Appeal from Register of Wills	
Non pros for failure to present bond.....	10.8.2(c)
Auditors and masters .....	8.8.1
Guardians.....	14.2.5
Inalienable property	
Mortgage.....	12.12.1
Sale .....	12.12.1
Minor's estate	
Guardian's bond .....	12.5.2
Sale or mortgage of minor's real property .....	12.5.3
Real property	
Petition to fix or waive additional security .....	12.10.5
Private sale .....	12.10.4
Public sale .....	12.9.1, 12.9.4
Surety on additional bond .....	12.10.5
Sureties	
Attorney as surety .....	1.2.3
Certificate of appointment.....	1.2.5
Corporate sureties and fiduciaries.....	1.2.4, 1.2.7
Duty of fiduciary.....	1.2.4
Individual surety .....	1.2.4
Release of fiduciary and surety .....	1.2.8
<b>SERVICE</b>	
Action upon default .....	10.8.2(f), 10.8.2(g)
Adoption	
Involuntary termination of unknown putative father .....	15.4.1
Petition to confirm consent .....	15.5.1
Petition to terminate parental rights .....	15.4.2
Copies of pleadings .....	3.5.1
Exceptions .....	7.1.5
Guardianship	
Adjudication of capacity .....	14.3.1
Modification .....	14.2.6
Petition .....	14.1.1
Proof of service .....	14.2.3
Personal service .....	5.4.1
Unknown or non-resident distributees.....	6.9.3
Registered or certified mail.....	5.4.1
Title to real property.....	6.11.2
<b>SMALL ESTATES</b>	
Deposit in attorney's trustee account.....	1.2.6
Discharge of personal representative .....	12.7.1
Family exemption included .....	12.1.1
Finality of order .....	7.1.2
General requirements .....	6.1.5
Guardian's final account.....	14.2.5
Petition .....	12.0.1
Unknown distributee.....	13.3.1
<b>SPECIAL ORDERS</b>	
Attorney acting as surety.....	1.2.3
Depositions, discovery and production of documents .....	3.6.1
Examiners .....	9.1.1
Notice to absentee, presumed decedent or unascertained person .....	5.2.2
Notice to person under incapacity with no fiduciary .....	15.2.1

	<u>Rule No.</u>
Perpetuation of testimony .....	3.6.2
Release and substitution of surety .....	1.2.8
<b>SPECIAL PETITIONS</b>	
Family exemption	
Included in petition to settle small estate .....	12.1.1
Notice requirements .....	12.1.1
Petition .....	12.1.1
Minor's estates	
Allowance .....	12.5.4
Estate not in excess of PEF code .....	12.5.3
Mortgage or sale of real property .....	12.5.3
Presence of minor .....	12.5.1
Public sale of real property .....	12.9.1
Restricted account .....	12.5.2
Mortgage of real property .....	12.5.3, 12.11.1
Private sale of real property	
Exhibits .....	12.10.2
Higher offer .....	12.10.2
Security .....	12.10.4, 12.10.5
Public sale of real property	
Confirmation .....	12.9.3
Exhibits .....	12.9.2
Guardians .....	12.9.1
Notice .....	12.9.3
Personal representatives .....	12.9.1
Security .....	12.9.4
Trustees .....	12.9.1
Settlement of small estates	
Discharge of personal representative .....	12.7.1
Exhibits .....	12.0.1
Notice requirements .....	12.0.1
Petition .....	12.0.1
Trustees	
Appointment .....	12.6.1
Exhibits .....	12.6.1
Public sale of real property .....	12.9.1
Successor co-trustee .....	12.6.2
<b>SPOUSE</b>	
Family exemption .....	12.1.1
Minor's estate .....	12.5.4
Notice for person under incapacity .....	5.2.1
<b>STATEMENTS</b>	
Audit	
Accounts of guardians of estates of minors .....	6.2.2
Date of audit .....	6.4.2
Finality of orders, decrees and adjudications .....	7.1.2
General requirements .....	6.9.1
Hearing on objections .....	6.4.2
Notice to be given .....	6.9.1, 7.1.2
Waiver of objections .....	6.10.1, 7.1.2
Physician's statement for guardianship .....	14.2.1
Inheritance tax statement in settlement of small estates .....	12.0.1
Proposed distribution	
Additional receipts and disbursements .....	6.9.4
Finality of orders, decrees and adjudications .....	7.1.2
Notice to be given .....	6.9.1, 7.1.2
Objections .....	6.10.1
Waiver of objections .....	6.10.1, 7.1.2
<b>SUI JURIS</b>	
Appeals from Register of Wills .....	10.2.1
Guardianship petitions .....	14.1.1
Method of serving notice .....	5.2.1

**Rule No.****SURETIES**

Appeal from Register of Wills	
Non pros for failure to present bond .....	10.8.2(c)
Auditors and masters .....	8.8.1
Guardians .....	14.2.5
Inalienable property .....	12.12.1
Minor's estate	
Guardian's bond .....	12.5.2
Sale or mortgage of minor's real property .....	12.5.3
Real property	
Petition to fix or waive additional security .....	12.10.5
Private sale .....	12.10.4
Public sale .....	12.9.1, 12.9.4
Surety on additional bond .....	12.10.5
Sureties	
Attorney as surety .....	1.2.3
Certificate of appointment .....	1.2.5
Corporate sureties and fiduciaries .....	1.2.4, 1.2.7
Duty of fiduciary .....	1.2.4
Individual surety .....	1.2.4
Release of fiduciary and surety .....	1.2.8

**SURVIVING SPOUSE**

Family exemption .....	12.1.1
Minor's estate .....	12.5.4
Notice for person under incapacity .....	5.2.1

**TESTIMONY**

Adoption hearing .....	15.5.1
Depositions, discovery and production of documents .....	3.6.1
Guardianship hearing .....	14.2.2, 14.2.4
Perpetuation of testimony .....	3.6.2
Pre-trial conference .....	3.7.1

**TRIAL**

Demand for jury trial .....	10.8.2(e)
Depositions, discovery and production of documents .....	3.6.1
Perpetuation of testimony .....	3.6.2
Pre-trial conference .....	3.7.1

**TRUSTS AND TRUSTEES**

Appointment of trustee	
Exhibits .....	12.6.1
Successor co-trustee .....	12.6.2
Attorney's trustee account .....	1.2.6
Examiner .....	9.1.2
Finality of orders, decrees and adjudications .....	7.1.2
Inter vivos trusts .....	1.2.9
Method of serving notice .....	5.2.1, 5.6.1
Real property	
Inalienable property .....	12.12.3
Mortgage .....	12.11.1
Private sale .....	12.10.1, 12.10.2, 12.10.4
Public sale .....	12.9.1, 12.9.2, 12.9.4

**UNIFORM FIDUCIARY ACCOUNTING STANDARDS**

Accounts .....	6.1.1
----------------	-------

**UNKNOWN DISTRIBUTEES**

Contents of fiduciary's report .....	6.9.3
Report by fiduciary at audit of account .....	6.9.2
Settlement of small estate .....	12.0.1, 13.3.1

**VERIFICATIONS AND AFFIDAVITS**

Accounts .....	6.1.1, 6.1.3
Audit statement .....	6.9.1
Guardianship .....	14.2.1, 14.2.3

	<u>Rule No.</u>
Involuntary termination of parental rights.....	15.4.1
Private sale of real property .....	12.10.2
Return of service of notice .....	5.4.1, 5.4.2
Sureties .....	1.2.4
Unknown or non-resident distributees.....	6.9.3, 13.3.1

**VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS**

Included in petition to terminate putative father's rights.....	15.4.2
Procedure .....	15.1.1

**WAIVER**

Finality of certain orders, decrees and adjudications.....	7.1.2
Inalienable property .....	12.12.1
Objections to account or statement of proposed distribution .....	6.10.1
Petition to waive additional security.....	12.10.5

**ANY CORRECTIONS OR ADDITIONS MAY BE DIRECTED TO THE ORPHANS' COURT RULES COMMITTEE**

[Pa.B. Doc. No. 09-556. Filed for public inspection March 27, 2009, 9:00 a.m.]

**ERIE COUNTY**

**In the Matter of the Revision and Restatement of the Rules of Civil Procedure; Civil Division; No. 90015; Court Order 2009**

**Amended Order**

And Now, this 6th day of March, 2009, the order of December 19, 2008 amending the order of October 21, 2008 amending Local Rules 212.1, 212.4, 1301 and 1302 of the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, is hereby rescinded.

Furthermore, the order of October 21, 2008, amending Local Rules 212.1, 212.4, 1301 and 1302 of the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, is hereby amended to provide that these local rules were published in Volume 38, Number 51 of the *Pennsylvania Bulletin*, 38 Pa.B. 6885, on December 20, 2008, and became effective 30 days after publication on January 20, 2009.

By the Court

ELIZABETH K. KELLY,  
*President Judge*

[Pa.B. Doc. No. 09-557. Filed for public inspection March 27, 2009, 9:00 a.m.]

**LUZERNE COUNTY**

**Civil Procedure 206.4(c); No. 4448 of 2009**

**Order**

And Now, this 11th day of March, 2009, it is hereby Ordered and Decreed as follows:

1) The following designated Luzerne County Local Rule of Civil Procedure 206.4(c), Procedure for Issuance of Rule to Show Cause, a copy of which follows, is hereby amended as a Rule of Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2) The Luzerne County Court Administrator is directed to:

a) File seven (7) certified copies of this Order and the following Rule with the Administrative Office of Pennsylvania Courts.

b) Distribute two (2) certified copies of this Order and the following Rule, along with a diskette, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c) Arrange for the publication of this Order and Rule with the *Luzerne Legal Register*.

d) File proof of Compliance with this Rule, which shall include a copy of each transmittal letter.

By the Court

CHESTER B. MUROSKI,  
*President Judge*

**AMENDMENTS TO LUZERNE COUNTY RULES OF CIVIL PROCEDURE 206.4(c)**

**Rule 206.4(c) Procedure for issuance of rule to show cause. Issuance as of course. Discretionary issuance.**

(A) Procedure for Issuance of Rule to Show Cause. Issuance as of Course.

(1) With the exception of those matters governed by sub-section (B) of this Local Rule, a party seeking a Rule to Show Cause shall present the same along with the underlying Motion/Petition, a comprehensive Brief in Support and Proposed Order, to the Office of Court Administration.

**(a) All proceedings concerning the appointment of an arbitrator for claims arising under the underinsured or uninsured motorist provisions of an automobile insurance policy are subject to this Rule.**

(2) . . . (no change to text) . . .

(3) The Court Administrator will assign a return date for the Rule to Show Cause, no less than 20 days, in accordance with internal operating procedures of the Court of Common Pleas and issue the Rule to Show

**Cause. However, a rule to show cause issued upon a petition for appointment of an arbitrator shall be returnable in no less than 30 days.**

. . . (No further changes to the text of the Rule) . . .

[Pa.B. Doc. No. 09-558. Filed for public inspection March 27, 2009, 9:00 a.m.]

## LUZERNE COUNTY

### Order Amending Rules of Procedure 1038, 1301, 1308 and Rescinding Rules of Procedure 1302(G) and 1311

#### Order

Now This, 11th day of March, 2009, the Court hereby amends Luzerne County Rules of Civil Procedure 1038, 1301 and 1308, and rescinds Luzerne County Rules of Civil Procedure 1302(g) and 1311, in the attached form, effective immediately.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Order and the following Rules, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order and the following Rules along with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

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

By the Court

CHESTER B. MUROSKI,  
President Judge,

#### AMENDMENTS TO LUZERNE COUNTY RULES OF CIVIL PROCEDURE

*I. Rule 1038 is amended in its entirety to provide as follows:*

#### **Rule 1038. Trial without jury. Appeals from tax assessment of real estate.**

The following provisions shall govern the trial of appeals from the tax assessment of real estate:

##### 1. Definitions.

(a) Residential property is defined as a single-family residence or a multi-family residential structure with an owner occupied unit and containing no more than four units.

(b) Non-Residential is defined as all other property.

##### 2. Mediation.

All assessment appeals shall be referred by the Prothonotary to the court administrator for mediation. A report of mediation shall be filed in all cases.

##### 3. Trial List. Case at issue. Certificate of Readiness.

(a) After the expiration of sixty (60) days from the date of service of the original appeal petition, and after the pleadings in the case are closed and whether or not mediation has yet occurred, any of the parties may place the case at issue by filing a certificate of readiness with

the Prothonotary. The certificate shall classify the case as an assessment appeal and identify the nature of property as residential or non-residential as defined herein.

(b) The court administrator shall compile a trial/conciliation list for each term designated for the trial of assessment appeals. Separate trial/conciliation lists shall be compiled for residential and non-residential property.

(c) The court administrator shall notify the parties at least ninety (90) days prior to the beginning of the trial term that the appeal is scheduled to be conciliated/tried during that term.

##### 4. Conciliation.

(a) All appeals shall be conciliated before trial by a conciliation judge or special master assigned thereto.

(b) At the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the appeal. Note: Parties and counsel are advised to pay particular attention to the notice of conciliation. In appropriate cases, the conciliation and trial may be scheduled on the same day. In such instances, the parties must appear at the conciliation ready to move directly into trial if the conciliation does not result in settlement.

(c) If any party fails to comply with the provisions of this local rule, the court may impose sanctions or the special master may include in the report a recommendation for the imposition of appropriate sanctions, including but not limited to, attorneys' fees and costs against the party or parties failing to comply.

##### 5. Pre-Trial Statement.

(a) Sixty days prior to the date scheduled for conciliation of tax assessment appeal, the appellant shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(b) Twenty days prior to the date scheduled for conciliation of a tax assessment appeal, the appellee(s) shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following information or documents:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(c) All interested parties whose interests are aligned with the appellant shall distribute their Pre-Trial Statement in accordance with subsection (a) herein. All interested parties whose interests are aligned with the appellee(s) shall distribute their Pre-Trial Statement in accordance with subsection (b) herein.

(d) The failure to comply with subsections (a), (b) and (c) of this local rule shall result in appropriate relief, which may include the exclusion or limitation at trial of testimony or evidence which was not provided in the pre-trial statement or a recommendation for the imposition of attorneys' fees and costs against the party or parties failing to comply.

#### 6. Trial By Special Master.

(a) If a special master is assigned for trial, the special master shall schedule a trial and shall provide notice of the trial to all party(ies) and/or counsel of record.

The trial shall be open to the public and recorded by a court reporter.

The special master, in the discretion of the special master, may continue the trial.

#### (b) Report of Special Master.

Following the trial, the special master shall file a written report and recommendation which may be in narrative form stating the reasons for the recommendations and shall include a proposed final order. The special master shall serve a copy of the report and recommendation on all counsel of record or the party(ies), if not represented, by first class United States mail and the court administrator.

(c) Objections To Report and Recommendation of Special Master.

The parties shall file objections, if any, to the report and recommendation in writing within twenty days of the date of mailing of the report and recommendation by the special master. Objections must be accompanied by a certification of counsel that the trial transcript, or necessary portions thereof, has been ordered from the court reporter. Copies of the objections and certification shall be served on all counsel of record or if counsel have not entered their appearance on the party(ies), the special master and the court administrator.

#### (d) Briefs on Objections.

Within twenty days of the date on which the transcript is filed of record, the moving party shall file a brief in support of objections and shall serve a copy on all counsel of record or if counsel have not entered their appearance on the party(ies) and the court administrator. The brief in support of objections shall refer to transcript page numbers where possible. The moving party's failure to file a brief in support of objections shall constitute a waiver of all issues which could have been raised therein.

#### (e) Opposing Briefs.

Within twenty days after the moving party has filed a brief in support of objections, responding parties shall file their briefs in opposition to objections and serve a copy on all counsel of record or if counsel have not entered their appearance, on the party(ies), and the court administrator.

#### (f) Argument.

After the date set for briefs in opposition to objections has passed, the moving party shall notify the court administrator that the matter is ripe for argument by filing a notice that matter is ready for argument with the

court administrator on the civil argument request form which shall be made available at the court administrator's office. The moving party shall serve a copy of this notice on all counsel of record or if counsel have not entered their appearance on the party(ies). Upon the filing of this notice, the court shall schedule oral argument if requested by a party; otherwise, the matter shall be decided upon briefs.

#### (g) Final Order.

Following oral argument the court may enter an appropriate final order. In the event that none of the parties file objections as described above to the report and recommendation, the court shall enter a final order consistent with the report, recommendation and proposed final order submitted by the special master.

*II. Rule 1301 is amended in its entirety to provide as follows:*

#### **Rule 1301. Arbitration. Scope.**

The following civil actions shall first be submitted to compulsory arbitration and heard by a board of arbitrators:

All civil actions and actions in replevin in which the amount in controversy, exclusive of interest and costs, is Fifty Thousand (\$50,000.00) Dollars or less shall be submitted to and heard and decided by a Board of Arbitrators pursuant to and in accordance with the provisions of 42 Pa.C.S. § 7361 and Pa.R.C.P. 1301 et seq.

*III. Rule 1302(g) Assessment Appeals is rescinded.*

*IV. Rule 1308 is amended in its entirety to provide as follows:*

#### **Rule 1308. Appeal—Praeceptum for Trial List.**

Appeals from an award of the board of arbitrators shall be ordered on the trial list on praecipe of either party.

*V. Rule 1311 Procedure On Appeal is rescinded.*

[Pa.B. Doc. No. 09-559. Filed for public inspection March 27, 2009, 9:00 a.m.]

## LUZERNE COUNTY

### Pa.R.J.A. No. 509—Access to Financial Records; No. 3991-2009

#### Administrative Order

*Now This 5th day of March, 2009, it is hereby Ordered, Adjudged and Decreed:*

1. A request for access to financial records shall be submitted in writing to:

Rule 509—Open Records Officer  
c/o Office of Court Administration  
Luzerne County Courthouse  
200 North River Street  
Wilkes Barre, PA 18711  
Fax: (570) 825-6242  
Email:  
rule509openrecordsofficer@luzernecountycourts.com

2. Appeals from denial of access to any record shall be submitted in writing to:

Rule 509—Appeals Officer  
c/o Office of Court Administration  
Luzerne County Courthouse  
200 North River Street  
Wilkes-Barre, PA 18711

3. Pursuant to Pa.R.J.A. No. 509(c)(5), the District Court Administrator is designated as the Appeals Officer for the 11th Judicial District of Pennsylvania.

4. Fees are to be paid at the time the records are delivered unless prepayment is required. The Court adopts the fee schedule promulgated by the Luzerne County Commissioners. Payment shall be made to the Luzerne County Treasurer.

5. The provisions of this order shall be posted on the Court's web site www.luzernecountycourts.com.

**COMPLIANCE IS HEREBY DIRECTED.**

*By the Court*

CHESTER B. MUROSKEI,  
*President Judge*

[Pa.B. Doc. No. 09-560. Filed for public inspection March 27, 2009, 9:00 a.m.]

**LYCOMING COUNTY**

**Amendments to the Rules of Civil Procedure; Doc. No. 09 00596**

**Order**

*And Now*, this 5th day of March, 2009, it is hereby *Ordered and Directed* as follows:

1. The text of existing Lycoming County Rule of Civil Procedure L205.2(b)A shall be replaced by the text set forth on the attachment.

2. Lycoming County Rule of Civil Procedure L1007 is rescinded, and shall be replaced with new Rule L1007, which is set as follows.

3. The Prothonotary is directed to:

a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) certified copy of this order to the Pennsylvania Civil Procedural Rules Committee.

d. Forward one (1) copy of this order to the chairperson of the Lycoming County Customs and Rules Committee.

4. Revised Rule L1007 shall become effective 30 days after its publication in the *Pennsylvania Bulletin*.

5. Revised Rule L205.2(b)A shall become effective immediately after its publication on the Pennsylvania Judiciary's Web Application Portal.

*By the Court*

KENNETH D. BROWN,  
*President Judge*

**L205.2. Filing Legal Papers with the Prothonotary.**

**(a) Size of paper. . . .**

**(b) Required cover sheets.**

**A. Case monitoring notice.** This requirement applies to civil actions, statutory appeals and appeals from judgments of magisterial district judges, and any other civil matter requiring court action, except a matter filed under the Domestic Relations Code.

1. An original and one copy of a case monitoring notice shall be filed and served by the plaintiff or appellant:

i. Within ten days after an answer has been filed in a mortgage foreclosure action, a credit card collection case or a forfeiture action,

ii. With the filing of a notice of appeal in an administrative agency appeal, or

iii. With the filing of a complaint in a general civil case.

2. When a case is commenced by a writ of summons, the case monitoring notice shall be filed only with the filing of the complaint and not with the filing of the writ of summons.

3. In the event that no case monitoring notice is filed as required by this rule, any party may file a case monitoring notice.

4. The case monitoring notice shall not exceed one page. If necessary, the caption may be abbreviated to accommodate this requirement.

5. After the case monitoring notice is filed, the procedures set forth in rule L1007 shall apply.

6. The form of the case monitoring notice shall be substantially as follows:

**COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA CASE MONITORING NOTICE**

\_\_\_\_\_  
Plaintiff

vs.

: DOCKET NO:

:

: CIVIL ACTION

:

\_\_\_\_\_  
Defendant

DATE:

I. This matter is:

\_\_\_\_ **Mortgage Foreclosure** (file once an **Answer** has been filed). Time needed for trial \_\_\_\_ .

\_\_\_\_ **Credit Card Collection Case** (file once an **Answer** has been filed)

a) \_\_\_\_ Arbitration. (\$50,000 or less) Time needed for discovery? \_\_\_\_ months

b) \_\_\_\_ Trial. Fast track (6-12 months) \_\_\_\_  
Normal track (12-18 months) \_\_\_\_

\_\_\_\_ **Forfeiture** (file once an **Answer** has been filed)

\_\_\_\_ **Administrative Agency Appeal** (file with **Notice of Appeal**)

\_\_\_\_ **General Civil Case** (file with **Complaint**):

a) \_\_\_\_ Arbitration. (\$50,000 or less) Time needed for discovery? \_\_\_\_ months

b) \_\_\_\_ Fast track (6-12 months)

c) \_\_\_\_ Normal track (12-18 months)

d) \_\_\_\_ Complex track (18-24 months)

\_\_\_\_ **Other.** Action requested: \_\_\_\_\_

II. Jury trial demanded? \_\_\_\_ YES \_\_\_\_ NO



III. Please note any special scheduling concerns: \_\_\_\_\_

Name of filing counsel or pro se party: \_\_\_\_\_ for \_\_\_\_\_

Address: \_\_\_\_\_

Opposing counsel or pro se party: \_\_\_\_\_ for \_\_\_\_\_

Address: \_\_\_\_\_

**B. Motion Cover Sheet. . . .**

**L1007. Case Monitoring Notice. Scheduling Order. Trial/Hearing Scheduling.**

A. This rule applies to all matters requiring a case monitoring notice pursuant to rule L205.2(b)A. When the case monitoring notice is filed, the prothonotary shall file stamp and docket the notice and immediately forward a copy to the court administrator who shall assign a judge to the case and forward the notice to that judge for further action, as follows:

(1) **Mortgage foreclosure**—trial will be scheduled at the next available time, but no sooner than thirty (30) days from the date of the notice.

(2) **Credit card collection case**—a scheduling order will be entered based on the track requested and any special scheduling concerns noted.

(3) **Forfeiture**—a pre-trial conference will be scheduled at the next available time but no sooner than thirty (30) days from the date of the notice.

(4) **Administrative agency appeal**—a conference with the court will be scheduled at the next available time but no sooner than thirty (30) days from the date of the notice.

(5) **General civil complaint**—a scheduling order will be entered based on the track requested and any special scheduling concerns noted.

(6) **Other**—as required by particular action filed.

B. A request for a revision of the scheduling order may be made by filing a motion that sets forth the reason for the request, along with a rule L205.2(b)B. motion cover sheet. The motion shall be accompanied by a proposed amended scheduling order. The motion shall indicate whether or not all other parties concur with the request. If the motion is uncontested, the parties shall so indicate on the motion cover sheet. If the motion is contested, the court may schedule a conference which may, upon prior arrangement, be conducted by telephone. If the *only* relief requested is a continuance of trial, the procedure to be followed is that required by rule L216.

C. A proposed amended scheduling order submitted under this rule shall be in the following form:

**COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA  
AMENDED SCHEDULING ORDER**

\_\_\_\_\_  
Plaintiff

vs.

: DOCKET NO:

:

: CIVIL ACTION

:

\_\_\_\_\_  
Defendant

AND NOW, this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, the scheduling order entered \_\_\_\_\_ is hereby amended as follows:

1. This is a \_\_\_ JURY \_\_\_ NON-JURY \_\_\_ ARBITRATION LIMITS case.

2(a). Trial term dates: \_\_\_\_\_ .

Jury selection dates: \_\_\_\_\_ .

Pretrial conference dates: \_\_\_\_\_ .

(The deputy court administrator will schedule the exact date and time by future notice.)

Settlement conference dates, if needed: \_\_\_\_\_ .

Counsel shall immediately notify parties and witnesses of the above dates.

2(b). (or) List for arbitration on or after: \_\_\_\_\_ .

3. Cut-off date for completion of discovery: \_\_\_\_\_ .

4. Cut-off dates for providing expert reports:

(a) By plaintiff(s) \_\_\_\_\_ .

(b) By defendant(s) \_\_\_\_\_ .

5. Cut-off date for filing dispositive motions, including motions to exclude expert testimony under Pa.R.C.P. 207.1:

6. Other: \_\_\_\_\_ .

\_\_\_\_\_  
Judge

cc: Deputy Court Administrator

Counsel for plaintiff: \_\_\_\_\_

Address: \_\_\_\_\_

Counsel for defendant: \_\_\_\_\_

Address: \_\_\_\_\_

[Pa.B. Doc. No. 09-561. Filed for public inspection March 27, 2009, 9:00 a.m.]

**NORTHAMPTON COUNTY**

**Administrative Order; Criminal Division 2009-3; N528—Types of Bail**

**Administrative Order**

And Now, this 6th day of March, 2009, it is hereby Ordered that the attached Northampton County Rule of Criminal Procedure N528, Types of Bail, is adopted as amended. Said Rule change is effective immediately.

*By the Court*

F. P. KIMBERLY MCFADDEN,  
*President Judge*

**Rule N528. Types of bail.**

**A. PERCENTAGE CASH BAIL**

(1) A defendant for whom bail has been set or a private third party surety, with the approval of the Court or with the approval of the issuing authority and the recommendation of the Court designated bail agency, shall execute the bail bond and deposit with the issuing authority or the Clerk of Courts Criminal a sum of money equal to ten per cent (10%) of the amount of bail set, but in no event less than Fifty (\$50.00) Dollars. Corporate sureties or

professional bail bondsmen or agents thereof are expressly prohibited from posting the deposit for bail as provided in this Rule.

(2) Where the Court or the issuing authority releases a defendant on bail on the percentage cash bail program, the Court designated bail agency shall be designated surety for the defendant, and the defendant shall then become subject to the rules and regulations of that bail agency.

#### B. REAL ESTATE

(1) If realty is offered to satisfy the bail set for an individual defendant, the owner shall present justification for such by filing an affidavit containing the following information for such realty:

- (a) Owner's name, address and occupation;
- (b) A general description of the real estate which is offered as surety, including location;
- (c) A statement of the manner in which title was obtained;
- (d) A statement of all encumbrances, including taxes, and estimated amounts required to satisfy said encumbrances;
- (e) A statement of any and all other surety undertakings; and

**(f) An appraisal setting the fair market value of any realty as of ninety days prior to the date said realty is offered as surety or a statement of the most current assessed valuation of any realty offered as surety.**

(2) Upon review of the affidavit, the Clerk of Court Criminal Division shall deduct from the fair market value the amount of any encumbrance, lien, judgment, mortgage or obligation of record to determine the net value of the realty. Realty shall only be accepted as consideration for bail if the net value is at least equal to the amount of the bail required.

(3) Realty shall be used as bail pursuant to this section only if it has not been posted or is not presently being used for bail for any other charges or defendants, unless permitted by court order.

Adopted December 3, 1996; revised March 5, 2009.

[Pa.B. Doc. No. 09-562. Filed for public inspection March 27, 2009, 9:00 a.m.]

#### SCHUYLKILL COUNTY

#### Minor Judiciary Fee Schedule; Installment Payment Plan Assessment; Administrative Order 2009.1; No. AD-26-2009

And Now, this 11th day of March, 2009, at 2:30 p.m., pursuant to 42 Pa.C.S. § 1725.1(c)(5), it is hereby Ordered that the Schuylkill County Magisterial District Judges are directed to impose upon defendants a fee of \$10.00 prior to authorizing an installment payment plan for court costs and fines.

The Installment Payment Plan Fee shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is further ordered to:

(1) File one certified copy of the Administrative Order with the Administration Office of Pennsylvania Courts **and**

(2) publish a copy of this Order on the Unified Judicial System's web site.

A copy of this order shall be publicly displayed in all Schuylkill County Magisterial Courts to provide adequate notice and uniform application of this fee.

By the Court

WILLIAM E. BALDWIN,  
*President Judge*

[Pa.B. Doc. No. 09-563. Filed for public inspection March 27, 2009, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that S. C. Bluespruce-Refert, having been disbarred on consent from the practice of law in the State of South Dakota by Order of the Supreme Court of South Dakota dated August 14, 2008, the Supreme Court of Pennsylvania issued an Order on March 17, 2009, disbaring S. C. Bluespruce-Refert, from the Bar of this Commonwealth, effective April 16, 2009. 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. 09-564. Filed for public inspection March 27, 2009, 9:00 a.m.]

### Notice of Disbarment

Notice is hereby given that Leonard Kingsley, having been disbarred from the practice of law in the State of Delaware by Order of the Supreme Court of the State of Delaware dated June 4, 2008, the Supreme Court of Pennsylvania issued an Order on March 17, 2009, disbaring Leonard Kingsley, from the Bar of this Commonwealth, effective April 16, 2009. 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. 09-565. Filed for public inspection March 27, 2009, 9:00 a.m.]

**Notice of Disbarment**

Notice is hereby given that Allen J. Rapoport having been submitted his disciplinary resignation from the practice of law in the State of Florida by Order of the Supreme Court of Florida dated February 1, 2001, the Supreme Court issued an Order on March 17, 2009, disbaring Allen J. Papoport from the Bar of this Commonwealth, effective April 16, 2009. 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 public in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 09-566. Filed for public inspection March 27, 2009, 9:00 a.m.]

---