

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 1, 5 and 11 ]

**Proposed New Pa.Rs.Crim.P. 151 and 152; amendments to Pa.R.Crim.P. 1101; and revisions to the Comments to Pa.Rs.Crim.P. 107 and 517**

### *Introduction*

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 151 and 152 and amend Rules 107, 517 and 1101, to provide procedures for the issuance of orders to detain and orders for the temporary transfer of prisoners. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed new Rules 151 and 152 and the changes to Rules 107, 517 and 1101 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
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Criminal Procedural Rules Committee  
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no later than Friday, November 13, 2009.

*By the Criminal Procedural  
Rules Committee*

D. PETER JOHNSON,  
*Chair*

### **Annex A**

## **TITLE 234. RULES OF CRIMINAL PROCEDURE**

### **PART I. GENERAL**

#### **CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

#### **PART A. BUSINESS OF THE COURTS**

#### **Rule 107. Contents of Subpoena.**

A subpoena in a criminal case shall order the witness named to appear before the court at the date, time, and place specified, and to bring any items identified or described. The subpoena shall also state on whose behalf the witness is being ordered to testify and the identity, address, and phone number of the attorney, if any, who applied for the subpoena.

### **Comment**

The form of subpoena was deleted in 1985 because it is no longer necessary to control the specific form of subpoena by rule.

It is intended that the subpoena shall be used not only for trial but also for any other stage of the proceedings when a subpoena is issuable, including preliminary hearings, hearings in connection with pretrial and post-trial motions, etc.

When the subpoena is for the production of documents, records, or things, these should be specified.

**For the procedures for the temporary transfer of prisoners to law enforcement, see Rule 152.**

**Official Note:** Previous Rule 9016 adopted January 28, 1983, effective July 1, 1983; rescinded November 9, 1984, effective January 2, 1985. Present Rule 9016 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 107 and amended March 1, 2000, effective April 1, 2001; **Comment revised** , 2009, **effective** , 2009.

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### *Committee Explanatory Reports*

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**Report explaining proposed Comment revision referencing the new Rule 152 procedures for orders for the temporary transfer of prisoners published at 39 Pa.B. 5896 (October 10, 2009).**

### **PART E. MISCELLANEOUS WARRANTS**

*(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)*

#### **Rule 151. Orders to Detain.**

(A) When a defendant is being confined in a place of incarceration in the Commonwealth on matters unrelated to a pending case, a judge in a pending summary or court case, upon an oral or written request or *sua sponte*, may issue an order to detain to be lodged with the place of incarceration.

(B) The order to detain:

(1) shall order the place of incarceration to detain a defendant after the defendant has completed his or her obligation to the place of incarceration;

(2) shall include the reason for which the order to detain the defendant has been issued;

(3) shall set forth, if a court case, any bail or conditions of release and, if a summary case, the conditions upon which the order may be lifted;

(4) shall designate the name and contact information of the person the place of incarceration must inform when the defendant is about to be released; and

(5) may be lodged with the place of incarceration by use of advanced communications technology.

(C) The place of incarceration shall inform the defendant when an order to detain is lodged against him or her and provide a copy of that order.

(D) In a court case, when bail has been set for a defendant in the pending case or, in a summary case, when there are conditions the defendant may meet to have the order to detain lifted, if the defendant posts bail

and meets the conditions of release, the defendant shall not be held under the order to detain and shall be released from that order immediately.

(E) When the place of incarceration becomes aware of the date upon which a defendant, against whom one or more orders to detain have been lodged, will complete his or her obligation to the place of incarceration, the place of incarceration shall inform any detaining authority of the date and time of release and of any other orders to detain lodged against the defendant.

(F) Duration of the Order to Detain

(1) The place of incarceration shall allow a reasonable time, not to exceed three business days from the time when the defendant is scheduled to be released from the place of incarceration, for the detaining authority to take custody of the defendant.

(2) Except as provided in paragraph (F)(3), if the detaining authority does not take custody of the defendant within the three-day time period following the scheduled release, then the order to detain shall expire by operation of law at the conclusion of the three-day time period and the place of incarceration shall not hold the defendant pursuant to the order to detain beyond the expiration.

(3) If the order to detain is lodged against a defendant who has been convicted or sentenced in the present case, the order to detain shall not expire by operation of law. The detaining authority promptly shall take custody of defendant.

(G) When more than one order to detain is lodged against a defendant,

(1) the detaining authorities shall enter into an agreement as to which authority will take custody of the defendant first.

(2) Following the resolution of each order to detain, the place of incarceration or detaining authority shall notify all the remaining detaining authorities.

(3) Except as provided in paragraph (G)(4), if none of the detaining authorities take custody of the defendant within the three-day period following release or the three-day period following resolution of an order to detain, then the order to detain shall expire by operation of law at the conclusion of the three-day time period and the place of incarceration shall release the defendant.

(4) If the order to detain is lodged against a defendant who has been convicted or sentenced in the present case, the order to detain shall not expire by operation of law. The detaining authority to whom priority had been agreed pursuant to paragraph (G)(1) promptly shall take custody of defendant.

(H) If a defendant is transferred to a different place of incarceration or to a detaining authority, the original place of incarceration shall insure that any orders to detain are lodged with the new place of incarceration or detaining authority.

### Comment

New Rule 151 was adopted in 2009 to provide procedures for the issuance of orders to detain in summary and court cases. The concept of an “order to detain,” or more colloquially a “detainer,” is a document filed with a prison or jail directing that a defendant be held after the original release date pending resolution of other court matters, has been known in Pennsylvania practice but is without firm statutory or rule authority. The purpose of

this rule is to provide procedures for the use of orders to detain as well as protections to the defendant subject to an order to detain.

For purposes of this rule, the term “judge” includes common pleas judges, Philadelphia Municipal Court judges, Philadelphia Traffic Court judges, and magisterial district judges.

A defendant may be subject to more than one order to detain at a time. The orders to detain may be issued by judges of the courts of common pleas or minor court judges in summary and court cases.

As used in this rule, “detaining authority” is the individual judge who issued the order to detain and the proper issuing authority if the issuer is unavailable.

The term “lift” is used in the rule because it was the term used in the previously undefined detainer practice. To “lift” or the “lifting” of an Order to Detain has the same operative effect as would an Order vacating the Order to Detain.

This rule is not applicable to probation and parole detainers or detainers issued pursuant to the Interstate Agreement on Detainers, 42 Pa.C.S. § 9101 et sec.

Reasons for which an order to detain may be issued include, but are not limited to, the following:

(a) an arrest warrant has been issued against the defendant in the pending court case;

(b) an arrest warrant in the pending case has been executed against the defendant, the defendant has been preliminarily arraigned pursuant to Rule 517, and the defendant is returned to the original place of incarceration;

(c) the pending case has been held for court after a preliminary hearing and the defendant is returned to the original place of incarceration;

(d) a bench warrant has been filed against the defendant in the pending case pursuant to Rule 150;

(e) a bench warrant has been executed against the defendant, a bench warrant hearing held pursuant to Rule 150, and the defendant has been returned to the original place of incarceration;

(f) the defendant has pled guilty or been convicted in the pending case but not yet sentenced;

(g) the defendant has been sentenced in the pending case but the execution of the sentence has not yet begun as a result of the defendant having received a sentence in the pending case that is consecutive to a sentence already being served in the place of incarceration;

(h) the defendant has been sentenced in the pending case but the service of the sentence has not yet begun;

(i) the defendant has begun serving a sentence in the pending case but before the sentence is complete, and the defendant has been released to another jurisdiction; and

(j) an arrest warrant or bench warrant has been issued pursuant to Rules 430 or 150 in the pending summary case.

An unexecuted arrest or bench warrant may form the basis for requesting an order to detain; the warrant itself may not serve as an order to detain. When an unexecuted arrest warrant is the basis for an order to detain, the out-of-county arrest procedures in Rules 517 and 518 may be used to execute the warrant. For the procedures when a bench warrant is executed, see Rule 150. If the place of incarceration determines that there is an outstanding

warrant for an individual about to be released but no order to detain has been lodged, the provisions of Rule 517 should be followed in cases involving an arrest warrant and the provisions of Rule 150 should be followed in cases involving a bench warrant before the defendant may be released.

Orders to detain may be used for circumstances in which a defendant has already completed some of the procedures in one case while still serving a sentence in another case. For example, when an arrest warrant has been executed, the defendant preliminarily arraigned pursuant to Rule 517 and returned to the original place of incarceration, an order to detain may be lodged to ensure the return of the defendant to the issuing jurisdiction for completion of any pending procedures. Similarly, a defendant serving a sentence in one jurisdiction could be brought to another jurisdiction to enter a guilty plea on a new charge. The defendant is then returned to the first jurisdiction to serve the remainder of the original sentence and an order to detain is filed to ensure the defendant's return to the jurisdiction in which the plea was entered.

In summary cases, orders to detain may be issued in any of the circumstances listed in Rule 430 for which an arrest warrant or bench warrant are issued, including the defendant's failure to respond to a citation or failure to pay the fine and costs on a summary case.

Under Rule 430, there are several means by which a defendant may avoid being taken into custody in some summary cases, particularly those in which only a fine or collateral is owed. When an order to detain is placed upon a defendant, he or she has the same right to purge himself or herself of the order to detain as the defendant would have if he or she were at liberty and an arrest warrant was executed against him or her as provided in Rule 431.

Paragraph (C) is intended to ensure that the defendant receives notice of what steps may be taken to be released from the order to detain, such as by posting bail.

Paragraph (F) emphasizes that an order to detain may not be used as an unfettered means of continuing the incarceration of a defendant beyond the time when he or she would otherwise be released by placing a 3-day limit on the detention following expiration of the incarceration. When an order to detain is lodged well in advance of a defendant's release from the place of incarceration, the detaining authority should make arrangements in advance of the defendant's release for the defendant's return to the detaining county. Under no circumstances may an order to detain be permitted to hold the defendant longer than three business days solely on the basis of the order to detain. Even this length of time may be avoided in court cases if the defendant meets the bail conditions and in summary cases if the defendant meets the conditions for lifting the order to detain.

The rule contemplates that, when there are multiple orders to detain placed on a defendant, all of the detaining authorities, who have been notified of the defendant's impending release pursuant to paragraph (G), are required to consult with each other to determine who will be first to take custody of the defendant. This process of notification and consultation shall be continued until all orders to detain have been resolved. In other words, after each order to detain is resolved, notice must be given to the remaining detaining authorities to act on their respective orders to detain. At each occasion when the defendant is made available to multiple detaining au-

thorities, those detaining authorities have no more than three business days in which to act upon their order to detain.

"Advanced Communications Technology" as defined in Rule 103 includes the use of facsimile or electronic mail.

Sections 9161—9165 of the Act of July 11, 1991, P. L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165, are suspended by Rule 1101(E) in so far as the statute is inconsistent with Rules 151 and 517. This suspension is intended to insure that Rule 151 provides the exclusive procedure for inter-county detention and that Rule 517 provides the exclusive procedures for the execution of an arrest warrant outside of the county of issuance.

**Official Note:** New Rule 151 adopted , 2009, effective , 2009.

**Committee Explanatory Reports:**

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Report explaining proposed new Rule 151 establishing procedures for orders to detain published at 39 Pa.B. 5896 (October 10, 2009).

*(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)*

**Rule 152. Orders for Temporary Transfer of Custody of Prisoner to Law Enforcement.**

(A) A judge, upon request of counsel or *sua sponte*, may order the custodian of the person confined in a place of incarceration in the Commonwealth to temporarily transfer custody of that person to a designated law enforcement officer or agency.

(B) The order for temporary transfer shall:

- (1) designate the law enforcement officer or agency to whom the custody is to be transferred;
- (2) specify the purpose for which the transfer is being ordered;
- (3) permit the designated law enforcement officer or agency to lodge the person transferred in a suitable place of incarceration for the duration of the event or proceeding for which the order has been issued.
- (4) act as an order to detain upon any other place of incarceration in which the person has been placed pursuant to the order for temporary transfer; and
- (5) direct the law enforcement officer or agency at the conclusion of the event or proceeding for which the order to transfer had been issued to ensure the return of the person to the place of incarceration from whose custody the person was acquired.

(C) A copy of the order shall be given to the person who is the subject of the order and to the designated law enforcement agency. A copy of the order also shall be given to the original place of incarceration and to any other place of incarceration in which the person is lodged during the event or proceeding for which the order has been issued.

**Comment**

New Rule 152 was adopted in 2009 to provide for the issuance of orders for the temporary transfer of a person in custody for the purpose to be specified in the order. This purpose ordinarily will be for the person to appear for a court proceeding, either as a witness or as a defendant. The procedures contained in this rule replace the traditional practice of writs of *habeas corpus ad*

*prosequendum* and of *habeas corpus ad testificandum* or other writs used to compel appearance before the judge of a person in custody.

For purposes of this rule, the term “judge” includes common pleas judges, Philadelphia Municipal Court judges, Philadelphia Traffic Court judges, and magisterial district judges.

The rule recognizes that often a law enforcement agency such as a county Sheriff’s Office may have primary responsibility for the transfer of prisoners. An order issued pursuant to this rule may designate the agency in general rather than designating a specific officer to whom custody is transferred.

Nothing in this rule is intended to preclude the continued use of other local procedures to obtain the intra-county release of prisoners, such as the use of “transport lists” used for transporting prisoners from a county jail to the same county’s courthouse.

In addition to the transfer of a prisoner for a court proceeding, the rule also may be used to transfer the custody of a prisoner to law enforcement for purposes of interrogation or discussion of cooperation. In such circumstances, the request for the order is required to be made by the attorney for the Commonwealth.

Prior to the actual transfer of the prisoner, it is highly recommended that the issuing authority or the designated law enforcement officer or agency contact the place of incarceration to coordinate the actual transfer.

For orders to detain, see Rule 151.

**Official Note:** New Rule 152 adopted , 2009, effective , 2009.

*Committee Explanatory Reports:*

Report explaining proposed new Rule 152 establishing procedures for orders for the temporary transfer of prisoners published at 39 Pa.B. 5896 (October 10, 2009).

**CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

**PART B(3). ARREST PROCEDURES IN COURT CASES**

**(a) Arrest Warrants**

**Rule 517. Procedure in Court Cases When Warrant of Arrest is Executed Outside the Judicial District of Issuance.**

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**Comment**

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**Sections 9161—9165 of the Act of July 11, 1991, P. L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165, are suspended by Rule 1101(E) in so far as the statute is inconsistent with Rules 151 and 517. This suspension is intended to insure that Rule 151 provides the exclusive procedure for inter-county detention and that Rule 517 provides the exclusive procedure for the execution of an arrest warrant outside of the county of issuance.**

**Official Note:** Original Rule 117 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 117 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 123 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; renumbered Rule 124 and amended August 9, 1994, effective

January 1, 1995; amended December 27, 1994, effective April 1, 1995; renumbered Rule 517 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; **Comment revised , 2009, effective , 2009.**

*Committee Explanatory Reports:*

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**Report explaining the proposed Comment revision regarding the suspension of Sections 9161—9165 of the Act of July 11, 1991, P. L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165 published 39 Pa.B. 5896 (October 10, 2009).**

**CHAPTER 11. ABOLITIONS AND SUSPENSIONS**

**Rule 1101. Suspension of Acts of Assembly.**

The rule provides for the suspension of the following Acts of Assembly:

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**(8) Sections 9161—9165 of the Act of July 11, 1991, P. L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165, which authorize procedures for arrest prior to requisition, are suspended only insofar as the sections are inconsistent with Rules 151 and 517.**

**Comment**

This rule is derived from former Rules 39, 159, 340, 1415, and 2020, the rules previously providing for the suspension of legislation.

**Official Note:** Former Rule 39 adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 159 adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 340 combined previous Rules 321 and 322, which were the prior suspension rules, and was adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 1415 adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 2020 adopted September 3, 1993, effective January 1, 1994; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. New Rule 1101 adopted March 1, 2000, effective April 1, 2001; **amended , 2009, effective , 2009.**

*Committee Explanatory Reports:*

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**Report explaining the proposed amendments regarding the suspension of Sections 9161—9165 of the Act of July 11, 1991, P. L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165, published at 39 Pa.B. 5896 (October 10, 2009)**

## REPORT

*Proposed New Pa.Rs.Crim.P. 151 and 152; amendments to Pa.R.Crim.P. 1101; and revisions to the Comments to Pa.Rs.Crim.P. 107 and 517.*

**ORDERS TO DETAIN AND ORDERS FOR THE TEMPORARY TRANSFER OF PRISONERS**

As a result of reports of wide variations in practice across this Commonwealth, the Committee has been studying the issues of intrastate orders for the detention of incarcerated individuals, or more colloquially "detainers," in summary and court cases. As a result of this examination, including an extensive survey of the courts, county prisons, and the Bureau of Corrections in this Commonwealth, the Committee concluded that: (1) the use of intrastate detainers is widespread; (2) there is considerable divergence in practice across the State, especially with regard to what document will be accepted as a detainer, the procedures for lodging detainers and the length of time an individual is held solely on the basis of a detainer; and (3) there is no authority for the use of such orders intrastate either by rule or by statute.<sup>1</sup>

The Committee also has been examining the issue of orders to release or transfer prisoners for court proceedings. As with detainer practice, there is wide variation in practice regarding the release or transfer of prisoners.

In our earliest discussions, the Committee considered order to detain or transfer as separate issues. As the development of these procedures progressed, the Committee determined that there is some overlap of procedures between these two types of orders, especially in the area of ensuring the return of a prisoner from one jurisdiction to another. The Committee considered that a consolidated approach might be better to address the question of how to hold, release, and transfer prisoners. The Committee therefore is proposing two complimentary rules that would provide uniformity of procedures for orders to detain and for orders to temporarily transfer prisoners.

**Orders to Detain**

The concept of an "order to detain," or a "detainer," is that of a document filed with a prison or jail directing that a defendant be held after the original release date pending resolution of other court matters. The purpose of proposed Rule 151 is to provide procedures for the use of these orders to detain, as well as protections to the defendant subject to an order to detain. The order to detain would be available for both intra- and inter-county use within this Commonwealth. Interstate detainers, which are covered by the Interstate Agreement on Detainers, 42 Pa.C.S. § 9101, and probation and parole detainers, which are addressed in 37 Pa. Code § 71.1 (relating to Initiation of proceedings), are specifically excluded from the provisions of this rule.

As noted previously, there currently is wide divergence in what jurisdictions will accept as a "detainer," from formal judicial orders to simple phone calls. The purpose of the rule is to provide structure and uniformity to these procedures. Since the order to detain, in effect, places a restriction upon an individual's liberty, the rule requires some judicial review before this is permitted. However, the idea is not to create a difficult or lengthy process. For this reason, the order to detain may be issued by any judge including a judge of the court of common pleas, a magisterial district judge, and the judges of the Philadel-

phia Municipal and Traffic Courts. An order to detain may be issued upon an oral or written request or *sua sponte*.

Originally, the Committee considered a rule that contained an exclusive list of all of the circumstances for which an order to detain could be issued. This idea ultimately was rejected since it would be difficult to be sure all the circumstances were covered by the rule. Rather, the *Comment* contains a nonexclusive list of examples of the types of situations for which detainers could be issued.

As part of the discussion of the situations for which an order to detain may be issued, the Committee debated whether or not unexecuted bench and arrest warrants should be excluded since Rule 517 provides for the execution of arrest warrants outside of the judicial district of issuance, and Rule 150 provides for similar procedures in the execution of bench warrants. However, the Committee was aware that reliance upon unexecuted warrants to act as detainers is a widespread practice and that forbidding the use of unexecuted warrants as a basis for a detainer was too radical a departure at this time. Under the proposed rules, however, an unexecuted warrant may not act in and of itself as an order to detain without any judicial review. Therefore, as described in the *Comment* to proposed New Rule 151, the preferred method in such situations is to accomplish the execution of the warrant using the provisions of Rules 150 or 517, whichever is applicable. If this would be too burdensome, then an unexecuted warrant may be used as the grounds for requesting an order to detain.

Additionally, there may be occasions in which law enforcement become aware of an outstanding warrant shortly before a defendant is to be released and there is not sufficient time to obtain an order to detain. In such cases, the procedures in Rules 150 or 517 can be utilized once a defendant is released from incarceration.

Based on the current ambiguity within rule procedures, one of the main concerns in the development of this rule was the danger that an individual could be held for long periods of time solely on the basis of a detainer without any sort of review. Part of the protection against this potential type of abuse is to require that the order to detain state, in court cases, any conditions of bail, or in summary cases, any circumstances, that the defendant might meet to obtain his or her release. In these cases, when the defendant's period of incarceration ends, the defendant must be released subject to the conditions of bail or release stated in the order to detain.

To further protect the defendant from languishing in prison for lengthy periods of time following the completion of his or her incarceration, the Committee agreed that the rule should include a time limit on the order to detain and on the time the detaining authority has to take the defendant into custody. After extensive discussions during which numerous time frames were examined, the Committee reasoned that providing the detaining authority with a maximum of 3 days after the original scheduled release date to make arrangements to take custody of the defendant did not impose a hardship on the detaining authority and protected the defendant from unreasonable detention. As a further safe guard, the Committee is recommending that the 3-day time limit expires by operation of law if the defendant has not been taken into custody by the detaining authority. However, Rule 151 specifically excludes from this expiration provision an order to detain issued to hold a defendant who already has been convicted or sentenced. This provision is

<sup>1</sup> There is statutory authority for interstate detainers, contained in the Interstate Agreement on Detainers, 42 Pa.C.S. § 9101 et seq., regulatory authority for probation and parole detainers, 37 Pa. Code § 71.1. The term "detainer" also is used in juvenile practice and domestic relations matters.

intended to ensure that an already convicted or sentenced defendant would not be inappropriately released. In these situations, the detaining authority must make arraignments to take custody of the defendant promptly.

The Committee also considered the situation in which there are multiple orders to detain for the same defendant. The Committee rejected formulating an "order of priority" procedure in which, for example, the first order to detain lodged is the first order to detain on which the defendant would be released, as being too restrictive and having the possibility of causing a defendant to be held multiple times past his or her release date on consecutive detaining orders. Those members of the Committee regularly working with such situations reported that currently all detaining authorities agree to which one will take custody of the defendant first. Proposed Rule 151 codifies this practice by requiring that all detaining authorities be informed of a defendant's impending release and placing the burden on all detaining authorities to agree on who has priority to take custody of the defendant. If the parties do not agree or fail to take custody of a defendant in a timely fashion, the orders to detain would expire by operation of law.

A final issue considered by the Committee is whether the rule should provide a mechanism for the defendant to challenge the order to detain. Ultimately, the members concluded that the existing procedures for challenging orders to detain, such as the procedures for motions for writs of habeas corpus, are well established and afford the necessary protections. Therefore, the new rule does not include specific procedures for challenging the order to detain.

#### Orders for the Temporary Transfer of Prisoners

Around the same time the Committee began examining orders to detain, the Committee received reports from several judges concerning problems with obtaining the release of defendants held in other counties for proceedings in their courts. Of particular concern was a report that one county's policy was that, in the absence of any rule or statute related to the release of prisoners for court proceedings, it would rely solely upon the common law practice of requiring writs of habeas corpus *ad prosequendum* or *ad testificandum* for releasing prisoners to another jurisdiction. The Committee was concerned that the reliance on these common law writs might preclude their issuance by magisterial district justices.

The Committee concluded that this was another area that requires clarification and Statewide uniformity of procedures. Proposed New Rule 152 provides a single procedure by which a person who is incarcerated may be ordered released into the custody of law enforcement for a proceeding, either as a defendant or as a witness. The new rule also specifically provides for the subsequent return of the prisoner when the proceeding is completed, a procedure as important as providing for the release of a prisoner.

One issue that frequently was raised with the Committee was whether magisterial district judges have the authority to issue orders for temporary transfer of prisoners. The Committee examined the various criminal proceedings conducted by magisterial district judges and agreed that the judges should be given authority to require the presence of prisoners at proceedings in their courts in the interests of justice and to promote judicial economy. Proposed Rule 152 provides that the temporary transfer order may be issued by any judge. "Any judge," as used in this rule, includes judges of the court of

common pleas, magisterial district judges, and judges of the Philadelphia Municipal and Traffic Courts.

The new rule would replace the current varied procedures, such as the various writs, "release orders," and subpoenas. The order is intended to be the sole document required to ensure the presence of an incarcerated person for a court proceeding. Correlative to proposing New Rule 152, the Committee also is proposing that a cross-reference to the new rule be added to the subpoena rule, Rule 107, explaining that the transfer order is the means of obtaining the release of a prisoner to transfer for a proceeding.

To effectuate this process, the order for temporary transfer of prisoners is designed to accomplish four things. First, the order directs the warden or other authority who is originally holding the prisoner to transfer custody to a law enforcement officer or agency. Second, the order permits the law enforcement officer or agency to lodge the prisoner temporarily at a different place of incarceration for the duration of the event for which the order has been issued. Third, the order instructs the warden or other authority of the new place of incarceration to hold the prisoner until he or she can be returned to the original jurisdiction. Fourth, the order directs the law enforcement officer or agency to return the prisoner to the original place of incarceration when the event for which the order had been issued is completed. In addition to these four things, to ensure that all the parties are aware of the reason for the transfer, the rule requires that the order specify the reason for the release in the order itself.

The New Rule 152 *Comment* addresses two other points. First, the *Comment* explains that, in addition to releasing a prisoner for a court proceeding, the transfer order could be used to obtain the release of a prisoner for interrogation or discussion of cooperation with law enforcement/prosecution. This provision, however, may not be used to interfere with a defendant's right to counsel.

The *Comment* also makes it clear that the current practice of using less formal procedures for intra-county transfers, such as the use of transfer lists, is permitted under the new rule. The Committee agreed this is one area where the local practices should not be prohibited.

#### Arrest Prior to Requisition Statute

Finally, the Committee examined the statutory provisions for intrastate arrest prior to requisition, 42 Pa.C.S. §§ 9161–9165, that provide procedures comparable to the procedures in Rules 517, 518 and proposed New Rule 151.<sup>2</sup> 42 Pa.C.S. § 9161 provides that an issuing authority may issue a warrant for any person that has been charged, anywhere in this Commonwealth, with the commission of a crime, with having fled from justice, having been convicted of a crime and having escaped from confinement, or having broken the terms of his bail, probation or parole, or is the subject of a complaint made before any issuing authority, or have a complaint filed on the basis of information received electronically that the individual is charged with a crime, has fled justice, or has escaped from confinement or has broken the terms of bail, probation, or parole after conviction. 42 Pa.C.S. § 9162 provides for the arrest without warrant of any person charged with a crime the penalty of which is death or imprisonment greater than 1 year and the subsequent

<sup>2</sup> It is not clear why this statute was deemed necessary since it was enacted subsequent to the promulgation of Rule 515 that provides for statewide execution of warrants and Rule 517 that provides the procedures to be followed when a warrant is executed outside of the jurisdiction of issuance.

filing a complaint under Section 9161. 42 Pa.C.S. § 9163 provides that an issuing authority may commit to the county jail for up to 5 days any person who has been charged under Section 9161. Bail may be set for this individual under Section 9164. 42 Pa.C.S. § 9165 provides for the costs of these procedures to be borne by the county in which the charges of the alleged crime were filed.

During the development of New Rule 151, the Committee received reports that the commitment to await requisition provisions of Section 9163 occasionally are being used as detainers. After reviewing the statute, the Committee concluded this use does not seem to be the intent of this statute. Rather, the procedures in this statutory provision appear to be an application to intrastate arrest warrants of the provisions of the Interstate Agreement on Detainers.

The Committee concluded that this statute conflicts with existing Statewide procedural rules, particularly Rule 517, since the statute provides for acting upon a warrant outside the judicial district of issuance at variance with the procedures in Rule 517. These statutory procedures would also be at variance with the proposed New Rule 151 governing the procedures for orders to detain. The Committee concluded that the statute therefore impinges on the Pennsylvania Supreme Court's exclusive rulemaking authority. Accordingly, the Committee is proposing an amendment to Rule 1101 (Suspension of Acts of Assembly) that adds a paragraph suspending §§ 9161—9165 of the Act of July 11, 1991, P.L. 76, No. 13, § 1, 42 Pa.C.S. §§ 9161—9165, only in so far as they are inconsistent with Rules 151, 152 and 517. Correlative explanatory provisions have been added to the *Comments* to Rules 151, 152 and 517.

[Pa.B. Doc. No. 09-1861. Filed for public inspection October 9, 2009, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BLAIR COUNTY Local Orphans' Court Rules

#### Order

*And Now*, this 28th day of September 2009, the Blair County Local Orphans' Court Rules, as indicated, shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The Court Administrator is directed to:

1. File seven (7) certified copies of the within Order and Orphans' Court Local Rules with the Administrative Office of Pennsylvania Courts;
2. Forward two (2) certified copies and a disk containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
3. Forward one (1) certified copy to the Civil Procedural Rules Committee of The Supreme Court of Pennsylvania;
4. Forward one (1) copy to the *Blair County Legal Bulletin* for publication.

Copies shall be kept continuously available for public inspection in the Office of the Blair County Prothonotary, the Office of the Court Administrator and the Blair County Law Library.

HONORABLE JOLENE GRUBB KOPRIVA,  
*President Judge*

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#### RULE 1

#### JUDGES—LOCAL RULES

##### Rule 1.2.1. Local Rules.

(a) These rules shall be known as the Blair County Orphans' Court Rules and shall be cited as B.C.O.C.R.

(b) These Blair County Orphans' Court Rules, in conjunction with the Supreme Court Orphans' Court Rules and all Acts of Assembly regulating the practice and procedure in the Orphans' Court, shall regulate the practice and procedure in the Orphans' Court Division of this Court.

(c) The Blair County Local Rules (B.C.L.R.) for the Court of Common Pleas of the Twenty-fourth Judicial District shall, except where inconsistent with these rules, apply in Orphans' Court cases.

*Note:* See Pa.O.C. Rule 3.1.

#### RULE 2

#### CONSTRUCTION AND APPLICATION OF RULES

##### Rule 2.1.1. Notes.

Notes and footnotes in these rules are for informational purposes and shall not be considered as part of these rules.

##### Rule 2.3.1. Definitions.

When used in these rules, the following words shall have the meanings ascribed to them in this rule, unless the context clearly indicates otherwise.

"Exception" means a disagreement with any decree, adjudication, confirmation, or other decision of this Court or any act of an auditor, master, or official examiner appointed by this Court.

"Objection" means a disagreement with any matter relating to the family exemption, surviving spouse's allowance, or with any act or omission of a fiduciary or as otherwise defined or permitted by these rules.

“PEF Code” means the “Probate, Estates and Fiduciaries Code,” 20 Pa.C.S. § 101, et seq.

*Note:* For local rules applicable to exceptions, see B.C.O.C.R. 7.1.1 and 7.1.2. The Court may disregard any misnomer of an exception or objection, and no such misnomer shall be grounds for dismissal. See Pa.O.C.R. 2.1 and Pa.R.C.P. 126.

### RULE 3

#### PLEADING AND PRACTICE

##### Rule 3.2.1. Pleadings. Limitation.

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

##### Rule 3.2.2. Pleadings. Failure to Answer.

(a) *Failure to Answer.* If the respondent fails to answer a petition as required by the Citation, all material averments of fact in the petition shall be taken as admitted and the Court may, at any time after the return day and upon proof of service of the Citation upon the respondent at least ten (10) days prior to the return date, upon motion, enter a decree granting the prayer of the petition or such other relief deemed appropriate by the Court.

(b) *Failure to Reply to New Matter.* If the petitioner fails to reply to new matter contained in an answer, the averments of fact set forth as new matter shall be deemed admitted and the case will be at issue.

##### Rule 3.4.1. Form of Petition. Petitions and Motions.

(a) Every original petition or motion filed shall set forth in its first paragraph the citation of any statute, rule of court, or other authority relied upon to justify the relief requested.

(b) Every petition or motion filed shall state with particularity the grounds on which it is based and shall be accompanied by a proposed order which, if approved by the Court, would grant the relief sought by the pleading. Every response in opposition to a motion or petition shall be accompanied by a proposed order which, if approved by the Court, would deny or amend the relief sought by the pleading.

(c) The Court may direct that a Rule or Citation be issued, or may schedule a hearing or conference as the issues in the case may dictate.

##### Rule 3.4.2. Form of Petition. Exhibits.

(a) There shall be attached to all petitions as exhibits the originals or copies of all wills, codicils, agreements, and other written instruments relied upon. If the petitioner is unable to attach a necessary exhibit, he shall so state in his petition together with the reason.

(b) The signature of an attorney to a petition shall constitute a certification by that attorney that all copies of written or printed instruments, records, or documents which are not certified or authenticated are true and correct copies of the original.

##### Rule 3.4.3. Form of Petition. Consents.

(a) All petitions shall aver that all parties in interest are petitioners, or that consents or joinders of all necessary parties are attached. If the petitioner is unable to attach a necessary consent or joinder, he shall so state in his petition together with the reason.

(b) Whenever a party other than a petitioner desires to consent to or join in the prayer of a petition, there shall be appended to the petition a written “Consent” or “Joinder” signed by the party in the following form:

I, \_\_\_\_\_, having read and considered the contents of the foregoing petition, do herewith waive the benefit of all requirements of notice of the presentation, or service upon me, of said petition, do authorize the Court to note my general appearance in said proceeding as though I had appeared personally or by counsel, do herewith waive all objections to the Court’s jurisdiction over my person, and I do herewith consent to or join in [add specifics of prayer for relief]

All “Consents” and “Joinders” shall be signed by at least two (2) witnesses.

##### Rule 3.5.1. Mode of Proceeding. Citation. Proof of Service.

(a)(1) *Personal Service.* Proof of personal service of a citation shall conform to the provisions of § 766 of the P.E.F. Code. The return shall set forth the date, time, place and manner of service and that true copies of the citation, petition, and preliminary order awarding the citation were handed to the respondent.

(2) *Service by Registered or Certified Mail.* Proof of service of a citation by registered or certified mail shall be by affidavit of the person making service, which shall set forth that true and correct copies of the citation, petition, and preliminary order awarding the citation were mailed to the respondent postage prepaid, return receipt requested, the date of mailing, the address to which notice was mailed and that attached to the return is the signed return receipt card which accompanied the letter.

(3) *Service by Publication.* Proof of service of a citation by publication shall consist of proofs of publication together with affidavits by the publisher.

(b) Except as otherwise provided, a return of notice shall be filed with the Clerk on or before the date set for the occurrence of the event of which notice has been given.

##### Rule 3.5.2. Method of Proceeding. Hearings.

(a) When an issue of fact is raised by the pleadings, including preliminary objections to jurisdiction, any party may move for a hearing, and the Court, in its discretion, will hear the matter, or refer the same to a master to hear the testimony and to report his findings of fact, conclusions of law and recommendations to the Court.

*Note:* See PEF Code § 751.

(b) When the pleadings are closed, any party in interest may move the Court for disposition of a question of law, upon briefs and oral argument, as needed.

##### Rule 3.5.3. Mode of Proceeding. Briefs and Argument.

(a) The Court after conference or hearing or in lieu thereof, and whether requested by an interested party or on its own motion, may direct disposition of the issues upon briefs.

(b) Any party or his attorney may request oral argument upon a motion or issue involved in any controverted proceeding and the Court shall have the right to require oral argument.



(c) Unless oral argument is requested or specifically directed, the Court will decide the issues on briefs as submitted per briefing schedule set by the Court.

**Rule 3.5.4. Mode of Proceeding. Procedure Where Briefs are Filed. Contents of Briefs.**

When a matter is directed for disposition on briefs, the attorney for the moving party, following a briefing schedule set by the Court, shall furnish the Court with a typewritten brief containing:

(a)(1) an index; (2) a history of the case; (3) a statement of the questions involved; (4) a statement of the facts of the case; (5) a copy of the exceptions, if any; (6) in cases begun by petition, copies of the pertinent docket entries and of the pleadings; (7) a copy of the will and codicils or trust instrument and any other documents the construction of which is involved; (8) a brief of argument; and (9) a certificate of service per (c) of this rule.

(b) The brief of the respondent may contain a counter-statement of the questions involved, a counter-statement of the facts of the case, and shall contain a brief of the argument.

(c) Copies of briefs shall be delivered to counsel of record for opposing parties at the same time a copy is delivered to the Court.

**Rule 3.5.5. Mode of Proceeding. Practice. 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 the issues;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and of 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.

*Note:* Practice as to pretrial conferences shall be governed by this Blair County Orphans' Court Rule 3.6.2. rather than Blair County Civil Rule 365.

**Rule 3.5.6. Mode of Proceeding. Non-Jury Trials.**

Cases requiring a hearing before a judge shall include, but shall not be limited to, voluntary relinquishments of parental rights, involuntary terminations of parental rights, adoptions, appointments of guardians, hearings on objections to accounts and hearings on challenges to grants of letters. Hearings on all such cases shall be scheduled by the Court.

**Rule 3.5.7. Mode of Proceeding. Appointment of Guardians or Trustees ad Litem.**

Guardians or trustees ad litem may be appointed to represent the interests of any prospective parties in interest who are not sui juris or who are absentees and

for whom no guardian or trustee has previously been appointed. Such appointments may be made upon the presentation of the petition to the Court or at any time during the course of the proceeding when the Court deems such action necessary.

**Rule 3.5.8. Mode of Proceeding. Inter Vivos Trust.**

When the Court is first required to exercise its jurisdiction over an inter vivos trust, the original trust instrument or a copy of it certified by counsel to be true and correct and any amendments thereto shall be filed with the Prothonotary. These instruments shall be indexed and recorded by the Prothonotary. Any revocation shall be likewise filed, indexed and recorded. The Rules of Court applicable to testamentary trusts shall apply, generally, to inter vivos trusts.

**Rule 3.5.9. Mode of Proceeding. Sureties.**

(a) *Individual Sureties.* Individuals proposed as sureties on bonds of fiduciaries shall make an affidavit to the Prothonotary, setting forth such information as the Prothonotary shall require. Each affidavit shall be filed together with its respective bond. No member of the Bar or any employee of this Court shall act as surety in any proceeding in this Court, except by special leave of Court.

(b) *Corporate Sureties.* Any corporate surety allowed to do business in Pennsylvania may act as surety, providing that a current certificate evidencing approval by the Insurance Department of the Commonwealth of Pennsylvania, together with a designation of attorney in fact, is on file with the Prothonotary.

**Rule 3.6.1. Depositions, Discovery, Production of Documents, and Perpetuation of Testimony.**

(a) Leave to take depositions, to obtain discovery or production of documents, or to perpetuate testimony may be granted only on petition upon cause shown except upon agreement of counsel.

(b) The procedure relating to depositions, discovery, production of documents, and perpetuation of testimony shall be governed by special order of the Court in every case.

**RULE 4**

**COMPUTATION OF TIME**

**Rule 4.1.1. Generally. [Reserved.]**

**RULE 5**

**NOTICE**

**Rule 5.1.1. Method. Form of Notice.**

Except as otherwise provided in these rules or as provided by Act of Assembly, every notice shall contain at least the following information:

- (a) the caption of the case;
- (b) a description of the nature of the proceeding;
- (c) the date, time, and place when the matter is to be heard by the Court to the extent then known;
- (d) the name of the decedent, settlor, minor, or incapacitated person, if not disclosed by the caption;
- (e) the names and addresses of all fiduciaries; and
- (f) the name and address of counsel for each fiduciary.

[*Note to Pa.O.C. 5.1:* Pa.R.C.P. 422, 423 and 424 specify to whom notice shall be given when serving the Commonwealth of Pennsylvania and its subdivisions, partnerships and unincorporated associations, and corporations, respectively.]

**Rule 5.1.2. Method. Legal Publication.**

The *Blair County Legal Bulletin* shall be the legal periodical for the publication of notices whenever publication in a legal periodical is required by Act of Assembly, by Rule, or by Order of Court.

**Rule 5.1.3. Service on Attorneys.**

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

**Rule 5.2.1. Method. When No Fiduciary.**

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, notice to a person who is not sui juris and whose interest is not represented by a guardian or trustee shall be given:

- (a) to the person, if the person is not sui juris solely by reason of minority but is over fourteen years of age; and
- (b) unless the Court by special order shall otherwise direct, to such one or more of the following persons as may exist:
  - (1) the parents of the person, if the person is an unmarried minor and one or both of the parents are sui juris;
  - (2) the spouse of the person;
  - (3) the individual with whom the person resides or by whom the person is maintained;
  - (4) the superintendent or other official of the institution having custody of the person;
  - (5) the attorney-in-fact with power to act on behalf of the person under a durable general power of attorney, if known; and
- (c) to such other persons as the Court by special order may direct.

**Rule 5.3.1. Advance Notice.**

In any proceeding in which no preliminary decree is required, the notice may be given in advance of the filing of the petition or other application to the Court. In such case the return of notice required by Pa.O.C.R. 5.4 and B.C.O.C.R. 5.4.1 may be included in or attached to the petition. The Court may direct additional notice whenever that is deemed advisable by the nature of the proceeding or the circumstances.

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

In addition to the requirements of Pa.O.C.R. 5.4 (relating to the return of notice), the following requirements shall be satisfied:

- (a) A copy of the notice required to be given shall be attached to the return.
- (b) *Personal Service.* Return of personal service shall set forth the date, time, place and manner of such service, and that a true and correct copy of the petition and notice were 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 copy thereof. When the person who gives notice by registered or certified mail has personal knowledge or has cause to believe that the notice was not received by the person to be notified, he shall so state in the return. When the address of the person to be served by registered

or certified mail is in a country other than the United States of America, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise specifically ordered by the Court.

(d) Publication. Return of notice by publication shall set forth the date(s) and newspapers and/or legal periodicals of publication and shall include proofs of publication, including an affidavit of publication by the publisher or agent of the publisher.

[*Note to Pa.O.C.R. 5.4:* See Pa.R.C.P. 76 for the definition of "affidavit."]

**RULE 6****ACCOUNTS AND DISTRIBUTION****Rule 6.1.1. Form. Additional Requirements.**

- (a) Accounts shall substantially conform to the model account forms approved by the Supreme Court.
- (b) In addition to all other applicable information required by the model account forms approved by the Supreme Court, the first page of the account shall include the following information:
  - (1) a caption;
  - (2) the name, address and telephone number of the accountant; and,
  - (3) the name, address and telephone number of the attorney representing the accountant.
- (c) In cases where a distribution is proposed, the account shall include a statement of proposed distribution in substantially the form shown in the model account forms approved by the Supreme Court.
- (d) The following items shall be attached at the end of the account in the following order:
  - (1) an affidavit or verified statement of the accountant in substantially the form set forth in the model account forms approved by the Supreme Court;
  - (2) a certificate of notice as required by Local Rule 6.2.1; and,
  - (3) for the first account of a personal representative, proofs of publication of the grant of letters as required by section 3162 of the Probate, Estates and Fiduciaries Code.

*Note:* See Pa.O.C. Rule 2.1 for the authority of the Court to disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

**Rule 6.2.1. Notice. Additional Requirements.**

- (a) Notice of the filing of the account shall include the following:
  - (1) a statement that the account was or will be filed with the Clerk of the Orphans Court, Blair County Courthouse, Hollidaysburg, Pennsylvania on or not later than a specified date and that it will be confirmed nisi on a specified date, and thereafter confirmed absolutely on a specified date unless written objections are filed thereto;
  - (2) a statement that any person who objects to transactions shown in the account must file written objections with the Clerk of the Orphans' Court at the Blair County, Courthouse, Hollidaysburg, Pennsylvania on any date prior to the date the account will be confirmed absolutely;
  - (3) a statement of any question of interpretation or distribution which will be presented to the Court for determination and the position taken on the question by

the accountant, if any, together with a statement that any person who wishes to take a position on the question or a position different from the accountant must file with the Clerk of the Orphans' Court at the Blair County Courthouse, Hollidaysburg, Pennsylvania on any date prior to the date the account will be confirmed absolutely file in writing a statement of their position on the question of interpretation or distribution; and,

(4) a description of the nature and value or amount of any unresolved claim; a statement whether the claim is admitted or contested; if the claim is admitted, a statement whether it will be paid in full or in part; and if the claim is contested, a statement that the claimant must file written objections with the Clerk of the Orphans' Court at the Blair County Courthouse, Hollidaysburg, Pennsylvania on any date prior to the date the account will be confirmed absolutely;

(5) The accountant shall attach to the account a certificate signed by the accountant or the attorney for the accountant that he or she has given notice as required in writing of the date the account will be confirmed nisi and the date the account will be confirmed absolutely. The certificate shall also set forth the names and addresses of the persons to whom notice of the filing of the account is being given.

**Rule 6.3.1. Advertisement of Accounts.**

All accounts required by law to be filed with the Clerk of the Orphans' Court Clerk shall be advertised by the Clerk in the manner prescribed by law. The notices shall specify the date the accounts will be confirmed nisi and the date the accounts will be confirmed absolutely. The notice shall also state that unless written objections are filed with the Clerk of the Orphans' Court at the Blair County Courthouse, Hollidaysburg, Pennsylvania on or before the date the Account is to be confirmed absolutely, the account will be confirmed absolutely and that thereafter distribution may be decreed by the Court, without reference to an auditor, in accordance with any statement of proposed distribution filed with the account.

**Rule 6.10.1. Objections to Accounts or Statements of Proposed Distribution.**

Objections to an account or statement of proposed distribution must be in writing, numbered consecutively, signed by the objector or his or her attorney, and each objection shall:

(a) be specific as to the item in the account or the item omitted from the account to which the objection is being filed;

(b) raise but one issue of law and fact for each item in the account or omitted from the account to which the objection is being filed. If there are several objections to one item included in or omitted from the account, all such objections shall be included in the same objection; and,

(c) set forth briefly the reason or reasons in support thereof for each objection.

**Rule 6.10.2. Objections to Accounts or Statements of Proposed Distribution-Filing-Service of Copy.**

(a) *Time of Filing.* Objections must be filed in writing with the Clerk of the Orphans' Court, Courthouse, Blair County, Pennsylvania no later than the day the account is scheduled to be confirmed absolutely.

(b) *Service of Copy.* A copy of the objections shall be served without delay after filing on accountant's attorney.

**Rule 6.10.3. Objections to Accounts or Statements of Proposed Distribution-Procedure.**

(a) When objections to an account or statement of proposed distribution have been filed, the Clerk of the Orphans' Court shall immediately transmit the objection to the President Judge.

(b) The President Judge shall enter such orders or order regarding the objections for disposition including but not limited to scheduling a hearing thereon or referring the objections to an auditor for disposition.

(c) An order of court the objections to an auditor for disposition shall set forth therein the name, address and telephone number of the auditor, any time limits given the auditor for disposition of the objections, the method of calculating the payment of the auditor and such other matters as the President Judge deems appropriate for the efficient disposition of the objections.

(d) An auditor shall be a licensed attorney who is a member in good standing of the Blair County Bar Association. The auditor shall have been licensed to practice law in the Commonwealth of Pennsylvania for a period of no less than five years.

**Rule 6.11.1. Small Estates.**

Petitions under § 3102 of the PEF Code for distribution of small estates shall set forth:

(a) the name and address of the petitioner and petitioner's relationship to the decedent;

(b) the name, date of death, and domicile of the decedent;

(c) whether the decedent died testate or intestate, the date of the probate of the will, if applicable, and the date of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount of the bond;

(d) the name 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, or otherwise, and whether any of them is a minor, incompetent or deceased, as well as the name of any decedent's fiduciary;

(e) the person or persons, if any, entitled to the family exemption and, if a claim therefore is made in the petition, any additional facts necessary to establish the person's right to the family exemption;

(f) an inventory of the real and personal estate of the decedent, the value ascribed to each item, either incorporated in the petition or attached as an exhibit;

(g) a list showing the nature, amounts, and preferences of all unpaid claims against the estate and indicating which claims are admitted;

(h) if any unpaid beneficiary, heir, or claimant has not joined in the petition, a statement that notice of the intention to present the petition has been given as required by these Rules; and

(i) a prayer for distribution of the personal property to those entitled and, if appropriate, for the discharge of the personal representative.

(j) There shall be attached to the petition the following exhibits:

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

(2) the joinders or consents of unpaid beneficiaries, heirs and claimants insofar as they are obtainable;

(3) an itemized list of disbursements made prior to the filing of the petition, indicating the payor and whether the disbursements were in payment of administration expenses, preferred or ordinary debts, items of distribution or the family exemption; and,

(4) a certificate of the Register showing the status of payment of the inheritance tax.

(k) No appraisalment shall be required unless ordered by the Court.

*Note:* See PEF Code § 3102.

#### **Rule 6.11.2. Confirmation Absolute.**

Unless objections are filed in accordance with B.C.O.C.R. 6.10.1., the confirmation of accounts and statements of proposed distribution filed with accounts shall be made absolute by the Clerk, without further order of Court.

#### **Rule 6.11.3. Confirmation of Title to Real Property.**

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

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

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

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

### **RULE 7 EXCEPTIONS**

#### **Rule 7.1.1. Exceptions. Generally.**

No exceptions shall be filed to decrees, adjudications, confirmations, or other decisions or orders of Court or in proceedings unless the right to except is expressly conferred by an Act of Assembly, by a general rule, or by a special order. All decrees, adjudications, confirmations or other decisions or orders of Court, other than those to which the exceptions are so allowed to be taken, shall be final and definitive.

*Note:* See B.C.O.C.R. 2.3.1.

#### **Rule 7.1.2. Exceptions. Time and Place of Filing.**

(a) Decrees, adjudications, confirmations or other decisions of the Court shall be confirmed absolutely, as of course, unless written exceptions thereto are filed within ten (10) days after the date the decision or order is filed.

(b) If timely exceptions are filed by a party, any other party may file exceptions within ten (10) days after the date on which the first exceptions were filed. However, such exceptions shall in no event raise questions which could have been, but were not, raised by objections to an account or by claims presented in accordance with B.C.O.C.R. 6.10.1.

(c) Exceptions shall be filed with the Prothonotary.

#### **Rule 7.1.3. Exceptions. Partial Distribution.**

When the matters which are the subject of an adjudication, schedule of distribution, or the report of an auditor or master, are so separate and distinct that an exception to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the adjudication, schedule of distribution, or report, shall not be suspended, except as to those matters to which exceptions have been filed; distribution may proceed as to the remainder, and any party from whom such distribution has been withheld may petition the Court to order distribution.

#### **Rule 7.1.4. Exceptions. Form.**

Exceptions shall be in writing, numbered consecutively, signed by the exceptant or by his or her attorney, and each exception shall

(a) be specific as to description and amount;

(b) raise but one issue of law or fact, but if there are several exceptions to items included in or omitted from the adjudication relating to the same issue, all such exceptions shall be included in the same exception; and

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

### **RULE 8**

#### **AUDITORS AND MASTERS**

#### **Rule 8.1.1. Appointment.**

An auditor shall be appointed only when all parties in interest or their counsel consent thereto in writing. 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. All auditors and masters shall be members of the Bar of the Supreme Court of Pennsylvania.

#### **Rule 8.1.2. Notice of Hearings.**

Once appointed, an auditor shall schedule a hearing and give notice thereof to all parties in interest at least ten (10) days prior to the hearing. The notice of the auditor shall be given in accordance with B.C.O.C.R. 5.1.

#### **Rule 8.1.3. Masters.**

Rules pertaining to auditors shall extend to masters insofar as applicable.

#### **Rule 8.2.1. Filing of Report. Place. Time.**

(a) The report of an auditor or master who has been appointed to assist the Court in the audit of an account or the disposition of an issue of fact in a matter shall be filed with the Prothonotary.

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

#### **Rule 8.3.1. Form of Auditor's Report.**

[No local rule.]

#### **Rule 8.4.1. Form of Master's Report.**

[No local rule.]

#### **Rule 8.5.1. Transcript of Testimony.**

[No local rule.]

#### **Rule 8.6.1. Notice of Intention to File. Proof of Notice.**

An auditor or master shall give ten (10) days notice in writing to all parties in interest or their counsel of record of his intention to file his report with the Court on a day certain.

**Rule 8.7.1. Confirmation of Report. Exceptions.**

Exceptions to the report may be filed with the auditor within ten (10) days after the receipt of the notice required by B.C.O.C.R. 8.6.1. If exceptions are filed, the auditor shall reconsider his or her report and present it to the Court with the exceptions attached. Immediately upon filing the report, the auditor shall give notice thereof to the attorney for each party in interest. Thereafter, no exceptions may be filed without leave of Court for good cause shown. When exceptions are filed by the auditor or by leave of Court for good cause shown, the Court may schedule the matter for argument.

**Rule 8.7.2. Confirmation.**

Following the notice and exception procedures of B.C.O.C.R. 8.6.1. and 8.7.1., an auditor's report and any exceptions thereto shall be filed with the Court. If no exceptions have been filed with the auditor, it will be confirmed absolutely.

**Rule 8.8.1. Compensation and Security.**

The auditor or master shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the Court shall direct.

**RULE 9****OFFICIAL EXAMINERS****Rule 9.1.1. Appointment of Official Examiners.**

Rules pertaining to auditors shall extend to official examiners insofar as applicable.

**RULE 10****REGISTER OF WILLS****Rule 10.2.1. Form of Appeal.**

When an appeal is taken from a judicial act or from a proceeding before the Register, the records of the matter shall be certified to the Court in accordance with 20 Pa.C.S.A. Section 907 (relating to certification of records to the Court). The appeal shall be in the form of a petition to the Court and shall set forth:

- (a) the nature of the proceedings before the Register;
- (b) the basis of the appeal, including the facts or circumstances upon which it is based;
- (c) the names and the addresses of all parties in interest, including those who have not been parties of record.
- (d) a request that a Citation be issued directed to all parties in interest including those not represented on the record to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside and reversed.

**Rule 10.2.2. Citation.**

Upon allowance of the petition, a citation shall be issued by the Court, to which an answer must be filed on a date set forth in the citation, directed to all parties in interest, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside. The Court may then schedule the matter for hearing. The citation and a copy of the petition shall be served by the party taking the appeal in the manner provided by the Probate, Estates and Fiduciaries Code § 765.

**Rule 10.2.3. Disposition-No Answer.**

If no answer is filed, upon proof of service of the citation, the Court may grant the relief requested.

**RULE 11****JURY TRIALS****Rule 11.1.1. Selection of Jurors. [Reserved.]****RULE 12****SPECIAL PETITIONS****Rule 12.1.1. Family Exemption. Additional Contents of Petition.**

In addition to the requirements of Pa.O.C. Rule 12.1. a petition for the family exemption shall also set forth:

- (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 on the date of his or her death;
- (c) if petitioner be the surviving spouse, the date and place of the marriage; and if a common law marriage is asserted, all averments necessary to establish the validity of the marriage;
- (d) whether the decedent died testate or intestate; whether, when and to whom letters were granted; and the names, relationship, and addresses of those interested in the estate; and
- (e) the location, description and value of the property claimed.

*Note:* See Pa.O.C. Rule 3.4., B.C.O.C.R. 3.4.1, 3.4.2 and 3.4.3., and PEF Code §§ 3121 to 3126.

**Rule 12.2.1. Allowance to Surviving Spouse. Additional Contents of Petition.**

A petition for the allowance to the surviving spouse of an intestate shall also set forth the information required in a petition for the family exemption under B.C.O.C.R. 12.1.1 insofar as is appropriate. Such a petition shall have a copy of the inventory attached to it.

*Note:* See PEF Code §§ 2102 to 2110.

**Rule 12.3.1. Elective Share. Extension of Time-Contents of Petition.**

A petition for extension of time in which the surviving spouse may file an election to take against the will shall set forth the facts relied upon to justify the extension sought.

*Note:* See PEF Code §§ 2201 to 2211.

**Rule 12.4.1. Appointment of a Guardian ad Litem of a Trustee ad Litem.**

[No local rule.]

**Rule 12.5.1. Appearance in Court-Minor Over Fourteen.**

If the minor is over the age of fourteen years old, the minor shall appear at the presentation of the petition and nominate the guardian in open Court. If the minor is unable to appear in person, the reasons for the minor's absence shall be set forth in the petition.

*Note:* See Pa.O.C. Rule 12.5(e) and PEF Code § 5113.

**Rule 12.5.2. Small Estates of Minors.**

- (a) A petition for the award of an estate of a minor without the appointment of a guardian or the entry of security shall contain the following:

(1) a statement that the net value of the entire real and personal estate of the minor does not exceed the statutory limitations; and

(2) the name of a bank or insured savings and loan association with at least one office in Blair County as the suggested depository.

(b) In the absence of satisfactory reasons for doing otherwise, the Court shall direct that any cash be deposited in an interest bearing account in such a depository in the name of the minor or the name of a natural guardian of the minor. In all cases, the account shall be expressly restricted by means of a notation on the records of the depository that no withdrawals may be made from the account until the minor attains the age of majority, except as authorized by a prior order of the Court. Further, evidence of the marking of the account to indicate the restriction shall be filed promptly as part of the record.

(c) Any authorization by the Court given to a parent or other person or institution maintaining the minor to execute a receipt, deed, mortgage or other instrument affecting real or personal property of the minor within the statutory limit shall be conditioned on the deposit of the proceeds therefrom in an account restricted as in (b) above.

*Note:* See PEF Code §§ 5101 to 5103.

**Rule 12.5.3. Allowances from Minor's Estate.**

A petition for an allowance from a minor's estate 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 his or her parents are living, the name of the person with whom he or she resides, and the name and age of his or her spouse and children, if any;

(c) the value of the minor's estate, real and personal, and his or her annual income;

(d) the circumstances of the minor, whether employed or attending school; whether a parent or other person charged with the duty of supporting the minor is living, the financial condition and income of the person and why the person is not discharging his or her duty of support; and whether there is adequate provision for the support and education of the minor, his or her spouse and children;

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

(f) the financial requirements of the minor and his or her family, in detail, and the circumstance making the allowance necessary.

*Note:* See PEF Code § 5164.

**Rule 12.6.1. Appointment of Trustee. Exhibit attached to Petition.**

A copy of the instrument creating the trust shall be attached as an exhibit to the petition.

**Rule 12.7.1. Discharge of a Fiduciary of Surety.**

[No local rule.]

**Rule 12.8.1. Partition.**

[No local rule.]

**Rule 12.9.1. Public Sale of Real Property.**

[No local rule.]

**Rule 12.10.1. Private Sale of Real Property.**

[No local rule.]

**Rule 12.11.1. Mortgage or Lease of Real Property.**

[No local rule.]

**Rule 12.12.1. Inalienable property.**

[No local rule.]

**Rule 12.13.1. Designation of a Successor Custodian.**

[No local rule.]

**Rule 12.14.1. Confirmation of Appointment of Trustee.**

[No local rule.]

**Rule 12.12.1. Cemetery Companies.**

[No local rule.]

**RULE 13**

**DISTRIBUTION; SPECIAL SITUATIONS**

**Rule 13.1.1. Representation by Counsel.**

If, pursuant to Pa.O.C. Rule 13.1, a foreign distributee or claimant is represented by counsel who possesses a valid duly authenticated power of attorney executed by the distributee or claimant, said power of attorney shall be filed in the office of the Prothonotary and a copy thereof served upon the fiduciary.

**Rule 13.2.1. Existence and Identity.**

If notice to a foreign consulate is required pursuant to Pa.O.C. Rule 13.2, a copy of said notice shall be attached to the Petition for Adjudication and, at the audit, the fiduciary shall provide a report as to any information resulting from such notice.

**Rule 13.3.1. Report by Fiduciary.**

If, pursuant to Pa.O.C. Rule 13.3, a report is submitted, said report shall be submitted with the schedule of distribution 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, a written report verified by the fiduciary or counsel setting forth:

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

(2) in cases of intestacy, a family tree, as complete as possible, supported by such documentary evidence as the fiduciary has been able to obtain.

(b) *Non-resident Distributee.* If the fiduciary requests the Court to withhold distribution to a non-resident distributee, a written report verified by the fiduciary or counsel setting forth:

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

(2) in cases of intestacy, a family tree, as complete as possible, 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.

**RULE 14**

**INCOMPETENTS' ESTATES**

**Rule 14.2.1. Petition to Adjudicate Incapacity. By Whom Filed.**

[No local rule.]

*Note:* See 20 Pa.C.S. § 5511(a): *The petitioner may be any person interested in the alleged incapacitated person's welfare.*

*Note:* See Pa.O.C. Rule 12.5. (a): *A petition for the appointment of a guardian for the estate or person of a minor shall be filed by the minor, if over fourteen years of age, and if under such age, by his parent or parents, the person with whom he resides or by whom he is maintained or by any person as next friend of the minor.*

**Rule 14.2.2. Petition to Adjudicate Incapacity. Contents.**

[No local rule.]

*Note:* See Pa.O.C. Rule 12.4 and 12.5.

*Note:* See 20 Pa.C.S. § 5511(e): **PETITION CONTENTS.**—*The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.*

*Note:* See Pa.O.C. Rule 12.5.(b) [where petition is for appointment of a guardian of a minor]: *“The petition shall set forth (1) the name, address and age of the minor; and the names and addresses of his parents, if living; (2) the name, address and relationship to the minor of the petitioner, if the petition is not filed by the minor; (3) that the minor's parents consent to the petition, if it is not filed by them, or the reason why they do not consent; (4) the necessity of the appointment of a guardian and that the minor has no guardian or that a guardian already appointed has died or has been discharged or removed by the court, together with the date of such death, discharge or removal and a reference to the court record of such discharge or removal; (5) the name, address and age of the proposed guardian and his relationship to the minor, if any; (6) the nature of any interest of the proposed guardian adverse to that of the minor including inter alia a reference to any estate in which the minor is interested and in which the proposed guardian is a fiduciary or surety or employee of a fiduciary or surety therein; (7) if the petition is for the appointment of a guardian of the person, the religious persuasion of the parents of the minor and of the proposed guardian; (8) if the petition is for the appointment of a guardian of the estate, an itemization of the assets of such estate, their location, approximate value and income, if any; (9) if the minor is entitled to receive any money as a party to any action or proceeding in any court, a reference to the court record and the amount to which the minor is entitled; and (10) that notice has been given to the United States Veterans' Administration or its successor, if the minor is the child of*

*a veteran and insurance or other gratuity is payable to him by the United States Veterans' Administration, or its successor.”*

**Rule 14.2.3. Petition. Contents. Written Consent.**

(a) If the proposed guardian is an individual, the written consent of the proposed guardian shall be attached to the petition pursuant to Pa.O.C. Rule 12.5(c), and shall include:

- (1) the place of residence of the proposed guardian;
- (2) the occupation of the proposed guardian;
- (3) a statement that the proposed guardian speaks, reads and writes the English language;
- (4) a statement that the proposed guardian does not have any interest adverse to the alleged incapacitated person;
- (5) a statement that the proposed guardian is not a fiduciary, or an officer or employee or a corporate fiduciary, of an estate in which the alleged incapacitated person has an interest; not the surety, or an officer or employee of a corporate surety of such a fiduciary.

(b) If the proposed guardian is a corporate guardian, the written consent of the proposed guardian shall contain a statement that it is not the fiduciary of an estate in which the alleged incapacitated person has an interest, nor the surety of such a fiduciary, and that the proposed guardian does not have any adverse interest to the alleged incapacitated person.

**Rule 14.2.4. Notice. To Whom Given.**

[No local rule.]

*Note:* See 20 Pa.C.S. § 5511(a): *“... notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers.”*

**Rule 14.2.5. Notice. Service on Incapacitated Person.**

[No local rule.]

*Note:* See Pa.O.C. Rule 5.2.

*Note:* See 20 Pa.C.S. § 5511(a): *“Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. . . . A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing.”*

**Rule 14.2.6. Notice. Service on Others.**

Notice required in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person, other than notice upon the alleged

or adjudicated incapacitated person, shall be by personal service, by service in such manner as the Court directs and/or as directed by statute in that particular case, or may be made by first-class mail, postage prepaid, to the known or last known address. In the latter case, a certificate of service shall be prepared and filed verifying that the address used is the proper known or last known address, and attaching a postal certificate of mailing.

*Note:* See 20 Pa.C.S. § 5511(a): “In addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers.”

**Rule 14.2.7. Hearing. Evidence in Support of Petition.**

[No local rule.]

*Note:* See 20 Pa.C.S. § 5518.

**Rule 14.2.8. Small Estates.**

If at hearing incapacity is established, and it appears that the gross estate does not exceed the statutory limitation as defined in § 5505 of the P.E.F. Code, the Court may award the entire estate to the person or institution maintaining the incapacitated person, or make such order as may be appropriate under the circumstances.

**Rule 14.2.9. Special Petitions for Allowances.**

(a) A petition for an allowance from an incapacitated person’s estate for maintenance and support of the incapacitated person or for payment of counsel fees, shall set forth:

(1) the name of the guardian and date of appointment, or, if the petitioner is not the guardian, the petitioner’s relationship to the incapacitated person or the nature of the petitioner’s interest;

(2) a summary of the inventory, the date it was filed and the nature and present value of the estate and its income;

(3) the address and occupation, if any, of the incapacitated person;

(4) the names and addresses of the incapacitated person’s dependents, if any;

(5) a statement of all claims of the incapacitated person’s creditors known to petitioner;

(6) a statement of all previous distribution allowed by the Court;

(7) a statement of the requested distribution and the reasons therefor.

(8) If any portion of the incapacitated person’s estate is received from the United States Veterans’ Administration or its successor, that notice of the request for allowance has been given to that agency.

**Rule 14.2.10. Reports of Guardian. Notice.**

(a)(1) *Guardian of the Person.* At least once within the first twelve months of the appointment and annually thereafter, the guardian of the person shall file a report with the Court outlining the guardian’s performance. The form of the report shall be substantially the same as the

form available in the office of the Prothonotary. A final report shall be filed within sixty (60) days after the death of the incapacitated person.

(2) *Guardian of the Estate.* In addition to the filing of an inventory which must be filed within ninety (90) days of appointment, the guardian of the estate shall file a report with the Court at least once within the first twelve months of the appointment and annually thereafter as to the administration of the ward’s estate. The Court, in its discretion, may require that the report be filed more frequently. The form of the report shall be substantially the same as the form available in the office of the Prothonotary. A final report shall be filed within sixty (60) days after the death of the ward.

(b) *Notice.* The guardian shall serve written notice of the filing of the report upon each care provider, next-of-kin, and all parties in interest by first-class mail within ten (10) days of filing the report in substantially the following form:

COURT OF COMMON PLEAS OF  
BLAIR COUNTY, PENNSYLVANIA  
ORPHANS’ COURT DIVISION

ANNUAL REPORT OF GUARDIAN

In the matter of the Estate of \_\_\_\_\_, an Incapacitated Person. To the care providers, next-of-kin, and all parties in interest in said affairs:

Notice is hereby given that \_\_\_\_\_, (guardian of the estate-guardian of the person) has filed in the office of the Prothonotary of the said Court the annual report concerning the affairs of the ward. A copy of the report is available for inspection in the office of the Prothonotary, Blair County Courthouse, 423 Allegheny Street, Hollidaysburg, PA 16648.

**Rule 14.3.1. Review Hearing.**

[No local rule.]

**Rule 14.4.1. Proceedings Relating to Real Estate.**

[No local rule.]

**Rule 14.5.1. Form of Citation and Notice.**

[No local rule.]

**RULE 15**

**ADOPTIONS**

See the Adoption Act, 23 Pa.C.S. § 2101 et seq. As to adoption jurisdiction in the Orphans’ Court Division in Blair County, see PEF Code, 20 Pa.C.S. §§ 711(7).

**Rule 15.1.1. Practice and Procedure.**

All reports and petitions relating to adoption shall be filed with the Prothonotary and shall be in such form as is designated from time to time by the Court. All filing fees shall be paid at the time of filing. Upon the completion of any proceedings relative to adoption, all documents in connection therewith shall be handled in the manner set forth in Pa.O.C. Rule 15.7.

**Rule 15.4.1.**

In every proceeding brought to terminate any parental rights as to a child born in the Commonwealth of Pennsylvania, petitioner shall obtain and provide to the Court at the time of the hearing thereon official certificates obtained from the Pennsylvania Department of Welfare (formerly obtained from the Pennsylvania Department of Health, Bureau of Vital Statistics) identifying any paternity acknowledgements or paternity claims on



file with the Department in accordance with 23 Pa.C.S. § 5103(b) as to each such child as to whom termination of parental rights is sought.

**Rule 15.5.3. Adoption. Certification of Receipt of Consent.**

Where a Petition for Adoption contains the Consent of a natural parent whose parental rights have not previously been terminated, petitioner's attorney shall aver in the subject petition that the natural parent has received a copy of the Consent to adoption that he/she signed.

**RULE 16**

**PROCEEDINGS PURSUANT TO SECTION 3206 OF THE ABORTION CONTROL ACT**

[Reserved.]

**RULE 17**

**SHORT TITLE**

**Rule 17.1. Short Title.**

These rules shall be known as Blair County Orphans' Court Rules and shall be cited as B.C.O.C. Rules.

[Pa.B. Doc. No. 09-1862. Filed for public inspection October 9, 2009, 9:00 a.m.]

**CHESTER COUNTY**

**In Re: Imposition of Monthly Adult Probation and Parole Administrative Fee; Administrative Order No. 4-2009**

*And Now*, this 29th day of September, 2009, it is hereby *Ordered* that a monthly administrative fee of Ten dollars (\$10.00) shall be imposed on any offender whom this Court places under the supervision of the Chester County Adult Probation and Parole Department. Assessment of this fee will commence 30 days after publication in the *Pennsylvania Bulletin*, and the monthly fee will be assessed on all individuals placed on supervision after that date and on all individuals on supervision as of that date. Payments of any and all Court-imposed financial obligations must be allocated to satisfy the payment of this fee, on a monthly basis.

This Administrative Fee shall be deposited into the Adult Probation and Parole Department Administrative Fee Account established by the Chief Adult Probation Officer. Disbursement of the funds collected from the assessment of this fee shall be allocated first to the salary and benefits of the Collection Unit of the Adult Probation and Parole Department Office, and second, to supplement any reduction in the Grant In Aid Revenues. Any excess revenues shall be disbursed only at the direction of the President Judge.

An accounting of this administrative fee shall be made quarterly to the President Judge.

It is *Further Ordered* that in accordance with Pa.R.Crim.P. 105(E) and (F), the District Court Administrator of Chester County shall:

1. Distribute two certified paper copies of the Administrative Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
2. Distribute to the Legislative Reference Bureau a copy of the Administrative Order on a computer diskette or on a CD-ROM, that complies with the requirements of 1 Pa. Code § 13.11(b).
3. Contemporaneously with publishing the Administrative Order in the *Pennsylvania Bulletin*, shall:

a. File one certified copy of the Administrative Order with the Administrative Office of Pennsylvania Courts; and

b. Publish a copy of the [Administrative Order] on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleslection.aspx>.

*By the Court*

PAULA FRANCISCO OTT,  
*President Judge*

[Pa.B. Doc. No. 09-1863. Filed for public inspection October 9, 2009, 9:00 a.m.]

**MONROE COUNTY**

**In Re: Administrative Order; Establishing a Standard for the Return of Overpayments in the Magisterial District Courts; No. 2 AD 2009**

**Order**

*And Now*, this 16th day of September, 2009, it is *Ordered* that the Magisterial District courts of the Forty-Third Judicial District are to return all overpayments where the remitter can be identified that are in excess of two dollars (\$2.00). Overpayments that are less than two dollars are to be forwarded to the County in the normal course of fiscal business as established in the procedures for unidentified remittances by the Administrative Office of Pennsylvania Courts Procedures manual(s).

*The effective date of this Order will be November 1, 2009.*

*By the Court*

RONALD E. VICAN,  
*President Judge*

[Pa.B. Doc. No. 09-1864. Filed for public inspection October 9, 2009, 9:00 a.m.]

**DISCIPLINARY BOARD OF THE SUPREME COURT**

**Notice of Suspension**

Notice is hereby given that Alan S. Toppelberg having been suspended from the practice of law in the District of Columbia for a period of sixty days, with thirty days held in abeyance, by Opinion and Order of the District of Columbia Court of Appeals decided September 21, 2006, and for a period of one year by Opinion and Order of the Court decided March 5, 2009; the Supreme Court of Pennsylvania issued an Order dated September 22, 2009 suspending Alan S. Toppelberg from the practice of law in this Commonwealth consistent with the Opinions and Orders of the District of Columbia Court of Appeals. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 09-1865. Filed for public inspection October 9, 2009, 9:00 a.m.]