

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Amending Rules 531 and 536 of the Rules of Criminal Procedure; No. 488 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 2nd day of May, 2017, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 46 Pa.B. 3935 (July 23, 2016) and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pennsylvania Rules of Criminal Procedure 531 and 536 are adopted, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2017.

Justice Donohue files a dissenting statement.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(2). General Procedures in All Bail Cases

Rule 531. Qualifications of Surety.

(A) Subject to any additional requirements prescribed by local rule of court, the following shall be qualified to act as sureties:

* * * * *

(4) professional bondsmen licensed under the Judicial Code, 42 Pa.C.S. §§ 5741—[5749] 5750;

* * * * *

Comment

Paragraph (A)(2) is intended to require that ownership of realty anywhere within the Commonwealth qualifies a person to act as a surety in any judicial district in the Commonwealth. Local procedure may not require as an “additional requirement” that realty must be located within the county before it may be posted to satisfy a monetary condition of release.

[“Professional bondsman,” as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5749, includes any person who, within a 30-day period, becomes a surety or indemnifies a surety pursuant to these rules in three or more matters not arising under the same transaction, whether or not the person charges a fee or receives compensation. See 42 Pa.C.S. § 5741.]

“Bail bondsman,” as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5750, includes a person who engages in the business of giving bail as a surety for compensation. See 42 Pa.C.S. § 5741.

“Surety,” as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5750, includes a person who pledges security, whether or not for compensation, in exchange for the release from custody of a person charged with a crime prior to adjudication. See 42 Pa.C.S. § 5741.

Under paragraph (A)(5), either the defendant or another person, such as a relative or neighbor, may deposit the percentage cash bail. If the defendant deposits the money, he or she signs the bond, thereby becoming a surety and liable for the full amount of the monetary condition if a condition of the bail bond is violated. If someone other than the defendant deposits the money and co-signs the bond with the defendant, that person becomes a surety for the defendant and is liable for the full amount of the monetary condition if a condition of the bail bond is violated. There may be cases in which the other person does not co-sign the bond, but merely deposits the money on behalf of the defendant. In such cases, that person would not be a surety and would not be liable for the full amount of the monetary condition.

Paragraph (B) is not intended to preclude an attorney, or the spouse or employee of an attorney, from being a surety as long as the defendant is not the attorney’s client or a client of the attorney’s office.

“Immediate family,” as used in paragraph (C), is intended to include only grandparents, parents, spouses, siblings, children, grandchildren, stepchildren, and like relatives-in-law.

Official Note: Former Rule 4011 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 534. Present Rule 4011 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 531 and amended March 1, 2000, effective April 1, 2001; amended May 2, 2017, effective July 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court’s Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the May 2, 2017 amendment regarding the statutory definition of “surety” published with the Court’s Order at 47 Pa.B. 2872 (May 20, 2017).

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) SANCTIONS

* * * * *

(2) Forfeiture

(a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing. **When the surety is a**

third party, the cash or other security may be ordered forfeited only when the condition of the bail bond violated is that the defendant has failed to appear for a scheduled court proceeding.

(b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.

(c) The forfeiture shall not be executed until [20] 90 days after notice of the forfeiture order.

(d) The bail authority may direct that a forfeiture be set aside or remitted as provided by law or if justice does not require the full enforcement of the forfeiture order.

* * * * *

(C) EXONERATION

(1) A bail authority, [in his or her discretion, may] as provided by law or as justice requires, shall exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.

(2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.

Comment

This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. *See generally* Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121—9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. *See also* the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and former paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). For the procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph (D) of Rule 543 (Disposition of Case at Preliminary Hearing).

Nothing in this rule is intended to preclude the issuance and service of the notice of revocation of release under paragraph (A)(1) and the notice of forfeiture of security under paragraph (A)(2) to be performed simultaneously. Compare 42 Pa.C.S. § 5741.1.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a magisterial district judge. *See* Rules 543 and 529.

This rule was amended in 2017 following the enactment of Section 5747.1 of the Judicial Code, 42 Pa.C.S. § 5747.1, that limits the grounds for which

bail might be forfeited by a third party surety to the defendant's failure to appear for a court proceeding. For all other violations of the conditions of bail, all other remedies remain available, including but not limited to, forfeiture by the defendant when he or she is the surety, revocation of bail, modification of bail, and indirect criminal contempt.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic [20-day] 90-day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

"Conditions of the bail bond" as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

Section 5747.1(b)(5) of the Judicial Code requires the bail authority to grant specific remittances to sureties if the defendant is produced within specified time periods. See 42 Pa.C.S. § 5747.1(b)(5). Otherwise, remittance or exoneration of the surety is within the discretion of the bail authority.

Official Note: Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; Comment revised May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009; amended May 2, 2017, effective July 1, 2017.

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the May 2, 2017 amendments necessitated by statutory changes related to bail forfeitures published with the Court's Order at 47 Pa.B. 2872 (May 20, 2017).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 531 and 536 Bail Forfeitures

On May 2, 2017, effective July 1, 2017, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 531 (Qualifications of Surety) and 536 (Procedures upon Violation of Conditions:

¹ The Committee's Final Reports 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 Committee's explanatory Final Reports.

Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety) to address changes made to the bail forfeiture practices as a result of Act 16 of 2015.

Since 2014, the Committee had been discussing bail forfeitures. Initially, this was as a result of the Pennsylvania Supreme Court's opinion in *Commonwealth v. Hann*, 81 A.3d 57 (Pa. 2013). This case was used by the Court to clarify that a "totality of the circumstances" analysis be used when a bail authority is faced with a request for the forfeiture of the bail bond. Specifically, the Court held that forfeiture could be awarded for the violation of non-monetary conditions of bail and that there need be no showing of financial loss to the Commonwealth. Initially, the Committee was considering adding a cross-reference to *Hann* to the bail rules, but also was examining whether the rules should provide some type of hearing procedure in which the analysis required under *Hann* could be conducted.

While the Committee was considering this issue, the Legislature enacted Act 16 of 2015 that is intended to provide uniformity to the regulation of professional bail bondsmen in Pennsylvania. The Governor signed the Act into law on July 2, 2015. Much of the Act deals with licensing and regulation of professional bail bondsmen. However, there are provisions in the Act that affect the forfeiture provisions of Rule 536 and some of these provisions were explicitly enacted to modify the provision in *Hann*. In particular, the Act creates new 42 Pa.C.S. § 5747.1 that provides procedures for bail forfeiture. Several of the provisions of new Section 5747.1 differ from the existing bail forfeiture procedures contained in Rule 536.

The Committee discussed whether aspects of the Act unconstitutionally impinged on the Court's exclusive procedural rule-making authority. Prior to this Act, the Legislature had deferred most aspects relating to bail to the Court's rulemaking authority in 42 Pa.C.S. § 5702 that states:

§ 5702. Bail to be governed by general rules

Except as otherwise provided by this title and the laws relating to the regulation of surety companies, all matters relating to the fixing, posting, forfeiting, exoneration and distribution of bail and recognizances shall be governed by general rules.

As a result, the bail rules contain some elements that might be more substantive than purely procedural. Additionally, Section 5702 contains the prefatory phrase, "Except as otherwise provided in this title. . ." that reserves the right of the Legislature to act in these areas so long as it does not interfere with the Court's constitutional rulemaking authority. Ultimately, the Committee concluded that some of the provisions in Act 16 related to forfeiture, particularly the grounds for which forfeiture may be ordered, did not impinge on the Court's rule-making authority and represented the Legislature exercising the right reserved in this area to act on the substantive aspects of bail that it had left to the Court under Section 5702. The Committee discussed which specific aspects of the Act might constitute procedural conflicts and those that were of a substantive nature and represented a "taking back" by the Legislature of authority over certain aspects of bail. The Committee concluded that, while some aspects of new Section 5747.1 are procedural in nature, many of the provisions of Section 5747.1 address substantive aspects of bail forfeiture and, therefore, fall within the Legislature's authority.

With regard to those portions of the Act that raise potential procedural conflicts, the Committee recognized that the Court has not always exercised the right to suspend statutes that impinged on the Court's constitutional rulemaking authority. The Committee therefore examined the areas of potential conflict to determine if rule changes could be made that would reconcile the bail rules with the Act. The Committee initially identified five areas where there are differences between Section 5747.1 and the forfeiture procedures contained in Rule 536.

First, Rule 536 treats revocation of bail and forfeiture of surety as separate decisions and provides for two separate actions to notify the defendant of these decisions. Rule 536(A)(1) provides that, upon violation of a bail condition, the bail authority may issue a bench warrant for the defendant and may issue an order to the surety to provide an explanation as to why the defendant's release should not be revoked. Paragraph (A)(2) contemplates that a separate notice of forfeiture be provided to the defendant and the surety with 20 days to respond. Section 5747.1(a) provides that, upon a defendant's failure to appear for a proceeding, the bail authority may issue a notice of bail revocation that shall also serve as a notice of the intent to forfeit the bail. Ninety days after the service of this notice of revocation, the revocation shall become a judgment of forfeiture.

In examining whether Rule 536 should be changed to reflect the statutory procedure, the Committee concluded that the procedure in Section 5747.1(a), *i.e.* having the notice of bail revocation act as the notice of intent to forfeit, is problematic since not every bail revocation will involve forfeiture. The Committee concluded that some additional notice must be provided to the defendant and the surety that forfeiture as well as revocation was being sought.

Therefore, the notice provisions of Rule 536 are retained but the Comment has been revised to state that the two notices may be served simultaneously. These two notices could be combined in a single document and therefore would be an effectuation of the Act from a procedural stand-point, providing appropriate, complete notice to the defendant and the surety.

The second potential conflict, related to the foregoing, was that Rule 536(A)(2)(c) provides 20 days from the service of the notice of forfeiture before the forfeiture order is finalized. Section 5747.1(b)(1) provides that the notice of revocation will become a judgment of forfeiture 90 days after the revocation order, allowing the surety time in which to respond to the forfeiture action. After reviewing the practice in other jurisdictions, the Committee concluded that an increase to the time limit to respond to a notice of forfeiture would not be unreasonable. Therefore the time for a response to the notice of forfeiture has been increased to 90 days in paragraph (A)(2)(c) of Rule 536.

The third potential conflict concerned the provisions in Rule 536(A)(1)(a) that permit forfeiture for violation of any bail condition. Paragraph (b)(6) of Section 5747.1 specifically limits the forfeiture exposure of third party sureties to the situation where the defendant has failed to appear and provides that any violation of "performance conditions by a defendant other than appearance" shall be treated as an indirect criminal contempt.

The Committee first examined whether this limitation on the grounds for which the bail bond may be forfeited is procedural or substantive. The Committee ultimately

concluded that the definition of the grounds for forfeiture represent a regulation of the right of a surety to the recovery of the pledged property and therefore is substantive in nature, falling within the authority of the Legislature to define. Therefore, a second sentence has been added to Rule 536(A)(2)(a) stating the limitation when the surety is a third party. Language has also been added to the Comment that further details this limitation.

Fourth, Section 5747.1(a) states that service of the notice to the surety must be by certified mail, return receipt requested while Rule 536 requires that the notice of forfeiture be served either personally or by both first class and certified mail at the defendant's and the surety's last known addresses. The Committee concluded that there is not a conflict here between the service provisions of the rule and the statute since the rule simply adds another procedural step for further assurance that service has been made.

Fifth, Rule 536(C) provides broad discretion to the courts to provide exoneration and remittance to a surety. Section 5747.1(b)(5) provides very specific relief for third party sureties that the bail authority is required to grant in certain circumstances. For example, if the defendant is returned between the 91st day and 6 months after the issuance of the forfeiture order, the surety is entitled to recover the full amount of the forfeited bail. If the defendant is returned between 6 months and 1 year, the surety is entitled to 80% of the forfeited bail and 50% if the defendant is returned between 1 and 2 years.

The Committee considered whether these provisions are procedural or substantive and concluded that these provisions are substantive. Rather than incorporate these specific provisions into the rule, the terminology of the rule would be changed, removing the general statement regarding the bail authorities' discretion and replacing it with the term "as provided by law" in paragraphs (A)(2)(d) and (C)(1) as well as adding a cross-reference to the statute in the Comment. However, to clarify that the bail authority's discretion remains unchanged in cases not affected by Section 5747.1, the phrase "or as justice requires" has been added to paragraph (C)(1) to read "A bail authority, as provided by law or as justice requires, shall exonerate a surety. . . ." Paragraph (A)(2)(d) does not require similar language since it already contains the phrase "if justice does not require the full enforcement of the forfeiture order." The phrase "in a timely manner" currently contained in paragraph (C)(1) now refers back to the time provisions within Section 5747.1(b)(5).

Finally, a revision has been made to the Comment to Rule 531 (Qualifications of Surety). Since the Act now includes a definition of surety, the Committee concluded that it would be helpful to include a cross-reference to the statutory definition in the Rule 531 Comment.

Dissenting Statement Justice Donohue

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, I would suspend portions of 42 Pa.C.S. § 5747.1(a) and 42 Pa.C.S. § 5747.1(b)(1), which the Criminal Procedural Rules Committee identified as procedural in nature. To the extent the amendment to Rule 536 incorporates those provisions, I respectfully dissent.

[Pa.B. Doc. No. 17-848. Filed for public inspection May 19, 2017, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CAMBRIA COUNTY

Adoption of Local Orphans' Court Rules; Orphans' Court Division; Case No. 1256

Order

Whereas, the Pennsylvania Supreme Court has adopted revised statewide Orphans' Court Rules; and

Whereas, the said Pennsylvania Orphans' Court Rules authorize local courts to adopt local Orphans' Court Rules; and

Whereas, the proposed local Orphans' Court Rules for Cambria County have been submitted to and approved by the Pennsylvania Orphans' Court Procedural Rules Committee;

Therefore, the Court of Common Pleas of Cambria County hereby orders as follows:

1. The following Orphans' Court Rules of Cambria County are hereby adopted to be effective on July 1, 2017.

2. The said Rules shall be published in the *Pennsylvania Bulletin* pursuant to Pennsylvania Rule of Judicial Administration No. 103(d) at least thirty (30) days prior to July 1, 2017.

By the Court

PATRICK T. KINIRY,
Judge

CAMBRIA COUNTY COURT OF COMMON PLEAS RULES OF THE ORPHANS' COURT DIVISION

CHAPTER I. PRELIMINARY RULES

CC Rule 1.1. Local Rules Citation Form.

(A) The Orphans' Court Rules for Cambria County, in conjunction with the Supreme Court Orphans' Court Rules and applicable Acts of Assembly regulating the practice and procedure in the Orphans' Court, shall regulate the practice and procedure of the procedure of the Orphans' Court Division of this Court.

(B) These Rules shall be known as the Cambria County Orphans' Court Rules and shall be cited as "CC Rule _____."

(C) These Rules shall be effective on July 1, 2017.

CC Rule 1.2.

The Local Rules applicable to the civil division shall not be applicable in the Orphans' Court unless directed in these Local Orphans' Court Rules.

CC Rule 1.3. Mediation.

All Interested Parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all Interested Parties as an order or decree of the Court.

(A) The Interested Parties may engage the services of a mediator, either prior to or after any Interested Party has filed a Pleading before the Court, including an Account filed by a fiduciary for audit.

(B) Upon the filing of a Pleading before the Court, including an Account filed by a fiduciary for audit, the Clerk, in the Clerk's discretion, may provide the filing party with generic information regarding availability of mediation for the resolution of disputes prior to adjudication by the Court.

(C) The filing party may but shall not be required to provide such information to other Interested Parties. The information, which does not bind the Court and which may be in the form of a standard brochure, should include:

- (1) A brief description of the mediation process;
- (2) The anticipated benefits of mediation for litigants and associated professionals; and
- (3) Contact information to initiate mediation.

(D) All the Interested Parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter.

In such request for mediation, all Interested Parties shall identify:

- (1) The proposed mediator and the proposed source of payment of fees and costs of the mediator;
- (2) Names and contact information of all Interested Parties and any counsel who shall participate in the mediation;
- (3) Names and information regarding any party's interest having diminished capacity or legal disability, whose interests must be adequately protected; and
- (4) The scheduled date for the initial mediation conference.

(E) All Interested Parties shall execute an Agreement for Confidential Mediation, which is not inconsistent with this Local Rule, which shall remain confidential, and which shall be in materially the same form as set forth on the Form CC 1.6(E). Upon execution of the Agreement for Confidential Mediation and its acceptance by the mediator, the parties shall return to the Court a Notice of Initiation of Mediation in the form set forth on Form CC 1.6(EE) and shall provide one copy to the Court and one copy to the mediator.

(F) Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court Hearings, unless specifically requested by joinder of the Interested Parties and so ordered by the Court.

(G) The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality. Upon the completion of the mediation, the mediator shall complete and return to the court, with copies to the parties, a Notice of Completion of Mediation in the form set forth on Form CC 1.6(G), and all Interested Parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolution(s) attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms may provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

(H) In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adult Protective Services Act, the Act of Dec. 18, 1996, P.L. 1125, No. 169 (35 P.S. §§ 10225.101—10225.5102), as may be amended or the Adult Protective Services Act.

(I) The Interested Parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an order or decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The parties to the mediation may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the Court's recommendations, in which the matter is deemed not to have resulted in an agreement.

(J) If a case is resolved by mediation and the parties and/or the Court do not require an order or decree pursuant to paragraph (I), the parties shall file a praecipe with the Clerk of the Orphans' Court to have the pleading, objections, or particular, marked settled or withdrawn.

CC Rule 1.4. Entry of Appearance.

Any counsel appearing before the Court or the Register shall enter a written appearance by one of the following means:

(A) Counsel filing any initial or responsive pleading shall include, at the end of the pleading following counsel's signature, counsel's address, phone number, fax number, counsel's Pennsylvania Attorney ID number, name of firm, and name of any co-counsel.

(B) Counsel who has not previously filed an initial or responsive pleading in a matter and who is appearing, for the first time at a hearing on behalf of any Interested Party shall file an Entry of Appearance with the Court to include the case caption and number, counsel's name, the name of counsel's firm, counsel's address, phone number, fax number, and counsel's Pennsylvania Attorney ID number.

(C) Counsel who is filing an initial document with the Register of Wills or the Clerk of the Orphans' Court (such as, for example, a Petition for Letters Testamentary or Administration, an initial inheritance tax return, or other documents that do not constitute pleadings per se but which could become the subject of Orphans' Court proceedings) shall include on the document counsel's name, the name of counsel's firm, counsel's address, phone number, fax number, and counsel's Pennsylvania Attorney ID number.

(D) Counsel may include his or her e-mail address on any pleading or entry of appearance but are advised that by doing so, they may be deemed to have consented to accept service of pleadings and communications by e-mail pursuant to Pa.O.C. Rule 4.3(d).

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

CC Rule 2.1.

(A) *Time for Filing and Confirmation of Accounts:* Accounts of personal representatives to be confirmed shall be filed with the Clerk of the Orphans' Court not later than 4:00 p.m. (prevailing time) of the fourth (4th)

Monday preceding the date fixed for confirmation of the said Accounts. If no objections are filed to either the Account or the Statement of Proposed Distribution and the Court is satisfied that the Account and Statement of Proposed Distribution conform with Pennsylvania law, the Pennsylvania Orphans' Court Rules and these Rules, the Court may, at the time and date specified herein, make a Final decree confirming the Account and directing distribution in accordance with the Statement of Proposed Distribution. The Court shall approve, or pursuant to CC Rule 2.1(C), refuse to approve the account, by the end of the business day on the last Friday of January, March, May, July, September, and November of each year, provided that if the last Friday of any of the months is a legal holiday, the Court shall take such action on the next business day on which the Court is open. Notwithstanding the foregoing, the Court shall not act on any Account or proposed Schedule of Distribution sooner than twenty (20) days following the date of service of the Account or proposed Schedule of Distribution on all persons entitled to notice. The Accountant or counsel for the Accountant shall sign and file a Certificate of Service with the Clerk of the Orphans Court listing the name and address of each person served. The Certificate of Service may be filed with the Account or after filing of the Account, but must be filed not later than 4:00 P.M. of the day prior to the date set for approval of the Account. The Accountant or the attorney for the Accountant shall sign the Certificate of Service. The Court may rely upon the Certificate of Service.

(B) *Notice by Publication:* Notice of filing of the Account shall be given by the Clerk of the Orphans' Court to all persons concerned by advertisement in the *Cambria County Legal Journal* and in one newspaper of general circulation published in Cambria County at least once per week during the two (2) weeks immediately preceding the time for presentment of the Account to the Court. Said advertisement shall set forth the name of the Accountant, the capacity in which the Accountant is acting, the time at which the Account will be presented to the Court for confirmation and that objections, if any, must be filed on or before 4:00 p.m. on the last business day preceding the date proposed for confirmation.

(C) *Procedure Where Court Requires Further Hearing:* If the Court determines that the Account and/or Proposed Schedule of Distribution does not conform to Pennsylvania Law, the Pennsylvania Orphans' Court Rules and/or these Rules, or that clarifications or resolution of factual or legal issues relating to the Account or Proposed Statement of Distribution require further review, the Court may sua sponte request or order the Accountant or the attorney for the Accountant to provide supplemental information and/or may schedule a hearing or argument date at which the Accountant and/or the Accountant's attorney shall be present to respond to questions of law or fact raised by the Court. Notice of the Hearing or Argument schedule shall be given as determined and, if applicable, ordered by the Court.

CC Rule 2.2. Statements of Proposed Distributions.

(A) A Statement of Proposed Distribution shall be filed with any Account filed pursuant to Pennsylvania Orphans' Court Rules Chapter II.

(B) A proposed final Order approving the Statement of Proposed Distribution and Account shall be attached to the Statement of Proposed Distribution.

(C) The following shall apply to post-audit procedures:

In those cases where the Statement of Proposed Distribution includes a request for a distribution of real estate,

the Register of Wills or Clerk of Orphans' Court shall be authorized to execute a Certificate of Award of Real Estate following the entry of the Court's final decree confirming the Account and Statement of Proposed Distribution.

CC Rule 2.3. Distributions without Formal Accounting.

In the event the distribution of the assets in an estate is to be made by the personal representative without the filing of a Formal Accounting, a receipt and release may be filed with the office of the Register of Wills. The original only of the receipt and release form shall be filed with the Register and no court order shall be required in order for the receipt and release form to be accepted by the Register of Wills. Said receipt and release may be filed with or without a final status report.

CHAPTER III. PETITION PRACTICE AND PLEADING

CC Rule 3.1. Form of Petition, Exhibits, Consents.

(A) In those cases where a Petition is alleged to be uncontested and not requiring a hearing unless the Court, in its discretion, deems appropriate, petitioner shall plead and attach the following:

(1) On the heading identifying the type of pleading filed, petitioners shall indicate "Proposed Uncontested Matter";

(2) Petitioner shall attach the name of all Interested Parties and shall attach the joinder or consents of each interested party who would otherwise be entitled to notice of the Petition.

(3) If a Consent is signed by a proposed representative of an interested party, the consent shall state that the proposed representative meets the criteria set forth in the Pennsylvania Orphans' Court Rules.

(B) For Petitions filed that require adjudication, petitioner shall state, under the heading identifying the type of pleading, either "Citation required" or "Notice required". Where a citation is required, petitioner shall comply with CC Rule 3.3.

CC Rule 3.2. Filing of Pleadings.

All Pleadings must be filed with the Clerk of Orphans' Court prior to presentation to the Court. The Clerk shall transmit the pleading to the Court for review. Any Order signed by the Court shall be transmitted by the Court back to the Clerk of Orphans Court.

CC Rule 3.3. Citation Practice.

Where a citation is to be issued, petitioner shall attach to the petition an Order in the form complying with CC Form 3.3 attached to these Rules. The Court shall have the discretion to schedule a status conference and/or hearing provided that the status conference or hearing date shall be at least thirty (30) days following the date of the filing, except in cases involving guardianship, adoptions and/or the Abortions Control Act provisions, which are not governed by these Rules. After the Court signs the order and files the same with the Clerk of Orphans' Court or Register of Wills, the Clerk or Register shall issue a citation in the form set forth on CC Form 3.4. The Petitioner shall serve the Citation and Petition in the manner set forth in the Pennsylvania Orphans' Court Rules.

Nothing contained in this Rule shall modify the requirements for petitions as set forth in Chapter III of the Pennsylvania Orphans' Court Rules.

CC Rule 3.4. Notice Practice.

Where a Petition is filed but no Citation is required, petitioner shall attach to the Petition an Order in the form complying with CC Form 3.3.1 attached to these Rules. The Court shall have the discretion to schedule a status conference and/or hearing provided that the status conference or hearing date shall be at least thirty (30) days following the date of the filing, except in cases involving guardianship, adoptions and/or the Abortion Control Act provisions, which are not governed by these Rules. After the Court signs the order and files the same with the Clerk of Orphans' Court, the petitioner shall serve the Order, together with such other notices as required by the Pa.O.C. Rules for Petitions requiring notice.

Nothing contained in this Rule shall modify the requirements for petitions as set forth in Chapter III of the Pennsylvania Orphans' Court Rules.

CHAPTER IV. FORMAT AND SERVICE OF LEGAL PAPER BY PARTIES AND COURT; ELECTRONIC FILING—RESERVED

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

CC Rule 5.1.

Public notice of the sale of real property shall be given as required by law and as may be further required by Court Order in any particular matter.

CHAPTER VI. RESERVED

CHAPTER VII. RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE

CC Rule 7.1. Discovery.

Depositions, discovery, production of documents, and perpetuation of testimony shall be permitted only by Court Order.

CC Rule 7.2. Motion for Judgment on the Pleadings.

After the relevant pleadings are closed, but within such time as not to unreasonably delay the hearing, any party may move for judgment on the pleadings. The moving parties shall attach a proposed Scheduling Order to the Motion. The Motion shall be filed with the Clerk of the Orphans' Court, who shall transmit the Motion and proposed Scheduling Order to the Court. The Court may enter such judgment or order as shall be proper on the pleadings, and may, in its discretion, schedule argument on the Motion.

CC Rule 7.3. Motion for Summary Judgment.

Motions for Summary Judgment shall be governed by Pennsylvania Orphans' Court Rule 7.3 supplemented by the following Local Rule: Motions for Summary Judgment shall be filed with the Clerk of Orphans Court. The party against whom the Motion for Summary Judgment is filed shall have a right to respond in accordance with Pennsylvania Orphans' Court Rule 7.3(b). If a response is filed, either party may then file a Praeceptum for Argument with the Clerk of the Orphans' Court, to which a scheduling Order shall be attached. In the event that the party against whom the Motion for Summary Judgment is filed fails to file any response or to take any actions as set forth in Pa.R.C.P. No. 1035.3, then the party filing the Motion for Summary Judgment may file a Praeceptum with the Clerk of the Orphans' Court for argument, or in the alternative, a Praeceptum requesting that the Court enter an Order without argument. If a Praeceptum for an Order

without argument is filed, the Court shall have the discretion to sign the Order, sign a modified Order, or schedule the matter for argument notwithstanding the Praeceptum requested by the moving party.

Consistent with Pa.R.C.P. No. 1035.3(e), nothing in this Rule shall prohibit the Court from ruling upon a Motion for Summary Judgment without written responses or briefs if no party is prejudiced. A party would be prejudiced if he or she is not given a full and fair opportunity to supplement the record and to oppose the Motion. If the Court grants a Motion under this section, the Court shall state its reasons for its decision.

CHAPTER VIII. RECONSIDERATION—RESERVED

CHAPTER IX. AUDITORS AND MASTERS

CC Rule 9.1.

An auditor or master may be appointed by the Court pursuant to Pa.C.S.A. § 751 and when appointed, shall give notice of scheduled hearings to the parties of interest as defined in 20 Pa.C.S.A. § 751(6), provided that the Court shall have the right to enter an order as to whether a guardian and/or trustee ad litem must be appointed to represent the interest, not already represented by a fiduciary, of a person not sui juris, an absentee, a presumed decedent, or unborn or unascertained persons or any beneficiary or heir whose whereabouts are not known.

CC Rule 9.2. Notice of Filing Report.

An auditor or master shall give notice of the filing of the Report or of the intention to file the report to all parties entitled to notice by first class mail return receipt requested mailed to the last known address of the parties, unless the Court authorizes notice by another means or to another address. The Notice of Filing Report shall contain a notice that objections or exceptions to the report must be filed by a date not more than twenty (20) days following the date on which the Notice of Filing Report is mailed, unless the Court, by Order, authorizes a longer period of time for filing objections.

CC Rule 9.3. Confirmation of Report.

(A) The report of the auditor may be confirmed by the Court if no objections are filed by any party receiving notice pursuant to CC Rule 9.2 and if the Court does not object or propose modifications to the Report, the Court shall schedule a hearing on the Report if the Court objects or proposes modifications to the Report.

CHAPTER X. REGISTER OF WILLS

CC Rule 10.1.

Appeals to the Court from an Order or Decree of the Register shall be by Petition and shall be governed by Chapter III of the Pennsylvania Orphans' Court Rules as supplemented by Chapter III of the Cambria County Rules of Orphans' Court.

CHAPTER XI. RESERVED

CHAPTER XII. RESERVED

CHAPTER XIII. RESERVED

CHAPTER XIV. SPECIAL FORMS

CC Rule 14.1.

Annual Reports of the Guardian of an Incapacitated Person shall be filed as follows:

(A) *Guardian of the Person*: The Report of the Guardian of a Person of an Incapacitated Person shall be filed on Pa.O.C. Form G-03.

(B) *Guardian of the Estate*: Where an individual has been appointed as the Guardian of the Estate of an Incapacitated Person, that individual shall file periodic reports on Pa.O.C. Rule Form OC-03.

CHAPTER XV.

Prior Cambria County O.C. Rule 15.7 CC relating to opening of impounded adoption records is hereby repealed.

Form: CC 1.6(E)

[CAPTION]

AGREEMENT TO MEDIATE ON A CONFIDENTIAL BASIS

This Agreement is effective on the _____ day of _____, 20____, among the undersigned persons to initiate a process of mediation regarding disputes among them that are in the subject matter of the Orphans' Court Division, of the Court of Common Pleas, as described in an attachment.

1. The public is served by speedy and amicable resolution of private disputes. It is in the interests of the Orphans' Court Divisions, of the Courts of Common Pleas of the various judicial districts in the Commonwealth, to encourage Interested Parties to mediate and discuss possibilities for resolution of matters under the Courts' jurisdiction, to resolve disputes in an efficient and fair manner through alternative dispute resolution (ADR) processes. The Courts encourage Interested Parties to participate voluntarily and mutually, rather than enter into adverse litigation. If mediation is unsuccessful, then litigation can proceed for Court adjudication of remaining disputes under its jurisdiction.

2. The Interested Parties and counsel, identified below, agree that they, and their representatives, shall be bound by 42 Pa.C.S.A. § 5949 (Confidential mediation communications and documents).

3. Furthermore, during the mediation process, the Interested Parties and counsel shall not disclose the mediation discussions in this matter, except to: (a) the Interested Parties themselves, (b) to their counsel, (c) to any expert(s) assisting counselor (e) as the Interested Parties and their counsel jointly agree. In no event shall the Mediator be called upon to disclose what occurred in the mediation.

4. If the Interested Parties and the counsel jointly agree to disclose some aspects of the mediation discussions, it shall not be considered a waiver of confidentiality of the other aspects of the mediation discussions.

5. No involvement in the mediation discussions will be allowed to any party in interest who declines to mediate on a confidential basis.

6. This Agreement does not determine whether any resolution, in itself, would be confidential. This Agreement only determines that the mediation discussions shall remain confidential. Whether or not a resolution itself will remain confidential will be the subject of agreement by the mediation participants.

7. If any participant, party in interest, counsel, or other representative breaches this Agreement to mediate in confidence, then any other participant or party in interest shall have the power to void, revoke, and terminate any mediation discussions or resolutions.

8. All persons who sign this Agreement agree, for themselves and their agents or representatives, to honor, both in spirit and in letter, the promise of confidentiality of mediation discussions contained in this Agreement.

9. All persons who sign this Agreement waive any liability, express, implied, or otherwise, regarding the mediation or the program whereby mediation was initiated, including the actions or omissions of a mediator or a mediation program sponsor.

10. All persons who sign this Agreement agree that they will enter into the Mediation in "good faith". Good faith includes, among other things, the following: 1) being fully prepared to discuss all aspects of the dispute, and possible solutions for resolving it; 2) having the person with the authority to approve the terms for resolution attend the mediation session, or, at the least, be available to confer with the party's representative during the mediation regarding the approval of terms; 3) demonstrating a willingness to listen and understand the perspectives of all participating parties; and (4) treating the parties, the Mediator, and all other participants with civility and respect.

11. All persons who sign this Agreement agree that the provisions of the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L. 1125, No. 169 (35 P.S. §§ 10225.101—10225.5102), and/or the Adult Protective Services Act as amended, to the extent applicable, shall be honored by the Mediator.

Signatures of Interested Parties/Counsel and Dates:

Acceptance by Mediator, with contact information:

Attachment: General description of matters to be mediated [customized for each mediation]

Note: This sample form relates to the participants in the mediation. A Mediator may utilize a separate or more complete agreement, so long as it is not inconsistent either with the applicable local court rule regarding mediation or with statewide Orphans' Court Rule 1.6 regarding mediation.

Form: CC 1.6(EE)

[Caption]

NOTICE OF INITIATION OF MEDIATION

Please complete prior to the date on which mediation is initiated. Return it directly to the Judge assigned to this matter (not to the Clerk of the Orphans' Court Division) at least ten days prior to the date on which the mediation is scheduled to commence, and also provide a copy simultaneously to the mediator.

Pursuant to the Agreement for Confidential Mediation executed on

_____, _____ (copy attached), all of the Interested Parties in this matter, including those represented by counsel, those representing themselves, and legal representatives of minors and alleged incapacitated persons, listed below in the capacity shown, state that we have agreed to initiate mediation in this matter on _____, _____ and that the mediator we have engaged is _____:

 Printed Name of Party's Counsel

 Printed Name of Party's Counsel

 Printed Name of Party's Counsel

 Printed Name of Party's Counsel

Dated: _____

Signature _____
 Printed Name of Party: _____

Signature _____
 Printed Name of Party: _____

Signature _____
 Printed Name of Party: _____

Signature _____
 Printed Name of Party: _____

Form: CC 1.6(G)

[Caption]

NOTICE OF COMPLETION OF MEDIATION

Please complete and return to [the Judge assigned to this matter][the Clerk of the Orphans' Court] immediately after the mediation is concluded or upon returning the case to the Court for other reasons.

Mediation Status:

- Case resolved and agreement executed and transmitted to court
- Case resolved and Interested Parties drafting agreement to be transmitted to court
- Case resolved in part
- Case resolved prior to mediation
- Case not resolved at this point
- Mediation terminated because mediation inappropriate for this case

Date Mediation Completed

Mediator—signature

Mediator—please print or type name

Mediator—phone number

Mediator—email address

CC FORM 3.3

CAPTION

ORDER

AND NOW this _____ day of _____, 20____, it is ORDERED as follows:

(1.) A rule is issued upon the Respondent to show cause why the Petitioner is not entitled to the relief requested in the foregoing pleading.

(2.) The Respondent shall file an Answer to the Petition within twenty (20) days from the date when the Petition is served on Respondent.

(3.) If Respondent fails to file an Answer, the Court may deem that Respondent does not object to the relief requested in the Petition and may grant the requested relief without further notice to Respondent.

(4.) _____ a status conference

OR

_____ a hearing

on the Petition is scheduled at the Cambria County Courthouse, Ebensburg, Pennsylvania, 15931 in Courtroom No. _____ at _____ o'clock ____ m. on _____, 20____.

(5.) The Clerk of the Orphans' Court is hereby directed to issue a citation to Respondent in the form set forth in CCOC Form 3.4 (citation).

BY THE COURT

J.

THE COURTS

CC FORM 3.4

CAPTION

ORPHANS COURT CITATION

TO:

On this _____ day of _____, 20____ you are hereby cited to appear before Judge _____ at the Cambria County Courthouse, Ebensburg, Pennsylvania, 15931 in Courtroom No. _____ at _____ o'clock ____ m. on _____, 20____ to respond to and comply with the attached Order.

BY THE CLERK OF THE CAMBRIA
COUNTY ORPHANS' COURT

CC FORM 3.3.1

CAPTION

ORDER

AND NOW this _____ day of _____, 20____, it is ORDERED as follows:

(1.) A rule is issued upon the Respondent to show cause why the Petitioner is not entitled to the relief requested in the foregoing pleading.

(2.) The Respondent shall file an Answer to the Petition within twenty (20) days from the date when the Petition is served on Respondent.

(3.) If Respondent fails to file an Answer, the Court may deem that Respondent does not object to the relief requested in the Petition and may grant the requested relief without further notice to Respondent.

(4.) _____ a status conference

OR

_____ a hearing

on the Petition is scheduled at the Cambria County Courthouse, Ebensburg, Pennsylvania, 15931 in Courtroom No. _____ at _____ o'clock ____ m. on _____, 20____

BY THE COURT

J.

[Pa.B. Doc. No. 17-849. Filed for public inspection May 19, 2017, 9:00 a.m.]

YORK COUNTY

**Amendment of Local Rules of Criminal Procedure;
CP-67-AD-21-2017**

**Administrative Order Adopting York County Local
Rule of Criminal Procedure 600**

And Now, this 8th day of May 2017, it is *Ordered* that York County Local Rule of Criminal Procedure 600 is adopted effective July 22, 2017.

The District Court Administrator shall publish this order as may be required.

By the Court

JOSEPH C. ADAMS,
President Judge

York R.Crim.P. 600. Prompt Trial.

(A) The purpose of this rule is to ensure the efficient use of judicial resources, to provide sufficient judicial resources to the Commonwealth's prosecuting agencies for the cases they intend to call for trial, and to ensure defendants receive reasonable notice of the jury term during which their trials will commence. Nothing in this rule shall limit or expand upon the provisions of Pa.R.Crim.P. 600 regarding calculation of time for commencement of trial.

(B) *Definitions:*

(1) District attorney includes the attorney general or any other prosecuting attorney or agency.

(2) Defendant includes the defendant's attorney or the self-represented defendant.

(3) Date-certain scheduling means the assigned judge, upon request of either party or sua sponte, orders that the trial shall commence on a specific date before any judge. It is a tool for the court's use to facilitate availability of parties and witnesses.

(4) Date-and-judge-certain scheduling means the assigned judge, upon request of either party or sua sponte, orders that the trial shall commence on a specific date before that same judge. It is a tool for the court's use when the judge who presided over pretrial issues believes the interests of justice and efficiency will be served by having that same judge preside over the trial.

(C) No later than five business days prior to the first day of the trial term, the district attorney shall provide to the district court administrator, in a format to be prescribed by the district court administrator, a written list of all cases the district attorney intends to call to trial in the trial term.

(1) The district attorney shall compile the list in order of priority for which the district attorney desires the court to allocate judicial resources for trial.

(2) If any case is being prosecuted by the attorney general or any agency other than the district attorney, the district attorney shall consult with that agency and include the case on the list.

(3) Prior to submission of the list, the district attorney shall consult with each defendant's attorney or the self-represented defendant to determine the following information:

(a) the estimated length of time in days the parties jointly anticipate the trial to last from voir dire through closing instructions;

(b) any dates during the forthcoming trial term when either party will be unable to conduct the trial for any reason, including but not limited to unavailability of witnesses or attorneys;

(c) the reason, if any exists, either party believes any specific judge of this court would be precluded from presiding over the trial in the event the currently assigned judge is unavailable when the district attorney calls the case to trial; and,

(d) the reason, if any exists, why either party will require more than one hour of advance notice when directed to appear for trial.

(4) Either party may request a pretrial conference to facilitate the exchange of information.

(5) The list shall contain, as a minimum, the following information for each case:

(a) docket number;

(b) defendant's name;

(c) assigned judge's name;

(d) defendant's attorney's name, or "self-represented";

(e) prosecuting attorney's name;

(f) all information detailed in section (C)(3) above;

(g) the date-certain or date-and-judge-certain scheduling information as ordered by the assigned judge, when applicable; and

(h) cross-reference to any other case(s) on the list consolidated for trial, when applicable.

(6) Contemporaneously upon filing the list with the district court administrator, the district attorney shall provide a copy of the list to every defendant's attorney and every self-represented defendant on the list so the defendants and their attorneys are aware of the relative timing for commencement of their trials during the term. Service may be made in paper or electronic format.

(D) Beginning no later than one business day prior to the first day of the jury trial term, the district court administrator shall assign cases for trial as each judge becomes available.

(1) The district court administrator shall start with the first case on the list provided by the district attorney and proceed through the list in sequence, continuing until either the list is exhausted or the trial term ends. Any cases ordered for date-certain or date-and-judge-certain scheduling shall be assigned out of sequence as necessary to comply with the order. The district court administrator may make minor deviations to the sequence in which cases are assigned, to facilitate the efficient use of judicial resources.

(2) If the next case on the list cannot proceed to trial for any of the following reasons, the district court administrator shall skip to the next case on the list and return to the skipped case when the next judge becomes available:

(a) the court has previously ordered a date-certain or date-and-judge-certain for the trial to commence later in the trial term;

(b) the prosecuting attorney, defendant or defendant's attorney is already in trial with another case or is scheduled for an imminent date-certain or date-and-judge-certain trial in another case; or

(c) one or more factors previously documented in section (C)(3) above preclude commencement of trial before the available judge.

(E) The district court administrator shall notify the judge of the trial assignment, and the judge shall direct the parties to appear to commence jury selection.

(1) If the district attorney declines to call the case for trial, absent good cause shown, the court shall strike the case from the list for the remainder of the trial term.

(2) If the defendant requests continuance, the court may deny the request, or grant the request and continue the case, either to a date-certain or date-and-judge-certain later in the term as requested by the district attorney, or for listing by the district attorney in a subsequent term.

(3) If the defendant fails to appear for trial, the court may issue a bench warrant. If the defendant subsequently appears or is apprehended during the term, the court shall proceed to trial if the district attorney desires to call the case, or continue the case either to a date-certain or date-and-judge-certain later in the term as requested by the district attorney, or for listing by the district attorney in a subsequent term.

(F) The district attorney shall immediately notify the district court administrator of any change in status of any case on the list, such as execution of a guilty plea, continuance or nol pros., diversion to ARD or a treatment court, or issuance of a bench warrant.

[Pa.B. Doc. No. 17-850. Filed for public inspection May 19, 2017, 9:00 a.m.]