

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 87]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 82

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to modify Rule 87.2 and 87.3 to permit the filing of complaints in electronic form.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(12), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JULIA M. FRANKSTON-MORRIS,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS COMPLAINTS

§ 87.2. [Contents] Manner of filing, form, and contents of complaint.

[Each complaint relating to alleged misconduct of an attorney shall be in writing and signed by the

complainant and shall contain a brief statement of the facts upon which the complaint is based. Verification of the complaint shall not be required. If necessary the Office of Disciplinary Counsel will assist the complainant in reducing the grievance to writing.]

Any person who alleges misconduct against an attorney may file a complaint, which may be in either paper or electronic form.

(a) A written complaint may be in the form of a letter or other appropriate writing, or submitted on an official complaint form (Form DB-2). Complaints in paper form may be filed by mail, facsimile transmission, or delivery in person to the location identified in § 85.5(a) (relating to location of the Office of the Chief Disciplinary Counsel) or one of the locations identified in § 85.5(b) (relating to the locations of the Disciplinary District Offices).

(b) The filing of complaints electronically shall be conducted only through electronic means approved by the Board. Instructions for electronic filing and protocols shall be available on the Disciplinary Board's website.

(c) A complaint shall be signed by the complainant and shall contain a statement of the facts upon which the complaint is based. Submission of a complaint through electronic means signifies intent to sign. Verification of the complaint shall not be required. If necessary the Office of Disciplinary Counsel will assist the complainant in reducing the grievance to writing.

§ 87.3. Distribution of complaint forms.

The Office of Disciplinary Counsel shall [furnish blank complaint forms (Form DB-2) (Complaint Against Attorney) to] provide each person who alleges misconduct against an attorney with a blank paper complaint form, or direct such person to the electronic form. [Such blank forms may also be made available to the public through the office of the prothonotary or clerk of each court of common pleas and through such other offices and agencies designated by the Board as agree to distribute such forms.]

§ 87.5. Transmission to disciplinary district office for investigation.

Enforcement Rule 208(a)(1) provides that all investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel. The complaint shall be transmitted [by means of Form DB-1 (Complaint Referrals)] to the district office of the Office of Disciplinary Counsel for the appropriate district as determined by § 93.2 (relating to venue).

[Pa.B. Doc. No. 17-1296. Filed for public inspection August 4, 2017, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 6]

Proposed Revision of the Comment to Pa.R.Crim.P. 150 and Proposed Amendment of Pa.R.Crim.P. 602

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 602 (Presence of the Defendant) and the revision of the Comment to Rule 150 (Bench Warrants) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 601 Commonwealth Avenue, Suite 6200
 Harrisburg, PA 17106-2635
 fax: (717) 231-9521
 e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, September 15, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee

CHARLES A. EHRLICH,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART E. Miscellaneous Warrants

Rule 150. Bench Warrants.

* * * * *

Comment

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As used in this rule, “court” includes magisterial district judge courts.

For procedures for a defendant who is apprehended on a bench warrant issued as a result of a proceeding *in absentia*, see Rule 602(C).

For the bench warrant procedures in summary cases, see Rules 430(B) and 431(C).

For the arrest warrants that initiate proceedings in court cases, see Chapter 5, Part B(3)(a), Rules 513, 514, 515, 516, 517, and 518. For the arrest warrants that initiate proceedings in summary cases, see Chapter 4, Part D(1), Rules 430(A) and 431(B).

Official Note: Adopted December 30, 2005, effective August 1, 2006; Comment revised October 24, 2013, effective January 1, 2014; **Comment revised** , **2017, effective** , **2017.**

Committee Explanatory Reports:

Final Report explaining new Rule 150 providing procedures for bench warrants published with the Court’s Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the October 24, 2013 Comment revision adding a cross-reference to new Rule 151 published with the Court’s Order at 43 Pa.B. 6655 (November 9, 2013).

Report explaining the proposed Comment revision cross-referencing the Rule 602 procedures for a defendant to challenge a proceeding being held in absentia published for comment at 47 Pa.B. 4521 (August 5, 2017).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART A. General Provisions

Rule 602. Presence of the Defendant.

(A) The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant’s absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence.

(B) A corporation may appear by its attorney for all purposes.

(C) CHALLENGES TO A FINDING OF ABSENCE WITHOUT CAUSE

(i) If a defendant is tried *in absentia* but not sentenced *in absentia*, the defendant, prior to or at time of sentencing, may file a motion seeking a new trial on the grounds that his or her absence at trial was with cause.

(ii) If a defendant is tried and sentenced *in absentia*, or if a defendant is present at trial but sentenced *in absentia*, and the defendant is subsequently taken into custody:

(a) the defendant promptly shall be brought before the sentencing judge, or a judge designated by the president judge, and notified that he or she may file a motion within 30 days seeking a new trial or sentencing hearing on the grounds that his or her absence at trial or at sentencing was with cause.

(b) Counsel for the defendant shall be present at the proceeding at which this notification is given.

(c) The notification shall occur while the defendant is within the jurisdiction of the sentencing court.

(d) The defendant shall remain within the jurisdiction of the sentencing court during the pendency of any motion filed pursuant to this rule or 30 days, whichever is longer.

Comment

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A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial after proper notice. See *Commonwealth v. Wilson*, 551 Pa. 593, 712 A.2d 735 (1998) (a defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present); *Commonwealth v. Sullens*, 533 Pa. 99, 619 A.2d 1349 (1992) (when a defendant is absent without cause at the time his or her trial is scheduled to begin, the defendant may be tried *in absentia*).

Any defendant who has been convicted or sentenced *in absentia* may challenge the holding of the proceeding in his or her absence by filing a motion for a new trial or sentencing hearing once the defendant is before the court. The defendant has the burden of demonstrating that there was justifiable cause for his or her absence. If the judge determines that the absence was with cause, the defendant must be afforded a new trial or sentencing hearing. Any defendant who is apprehended on a bench warrant as a result of a sentencing *in absentia* must be notified that he or she may file a motion, within 30 days of the notification, challenging the sentencing having been held *in absentia*. This notice must be given while the defendant is still within the jurisdiction of the sentencing court and prior to any transfer to a correctional facility for execution of sentence. Once a motion is filed pursuant to this rule, the defendant must be retained within the jurisdiction of the sentencing court. If no motion has been filed within the 30 days permitted under this rule, the sentence may be executed.

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, see, e.g., *Commonwealth v. Vega*, 553 Pa. 255, 719 A.2d 227 (1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present). Once a defendant appears before the court, he or she cannot waive his or her right to appear in capital case. See *Commonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994) (right of defendant to be present at trial of capital offense is transformed into obligation due to gravity of potential outcome).

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Official Note: Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001; Comment revised September 21, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013; **amended** , **2017**, **effective** , **2017**.

Committee Explanatory Reports:

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Final Report explaining the May 2, 2013 amendments concerning trials conducted in the defendant's absence published with the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Report explaining the proposed amendment concerning motions to challenge in absentia proceedings published for comment at 47 Pa.B. 4521 (August 5, 2017).

REPORT

Proposed Amendment to Pa.R.Crim.P. 602; Proposed Revision of the Comment to Pa.R.Crim.P. 150

In Absentia Relief

The Committee recently examined the question of relief for those defendants who assert that they have been tried or sentenced *in absentia* under Rule 602. Rule 602(A) provides that "the defendant's absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence." However, the rule does not specify a procedure for challenging an incorrect finding of absence without cause. There was a suggestion that the rules should provide a specific procedure for raising such challenges, particularly when the defendant has been sentenced *in absentia*.

During the Committee's discussion it was argued that there was no need to develop separate procedures since existing procedures such as a writ of *habeas corpus* or *nunc pro tunc* post-sentence motions should be sufficient to raise these types of challenges. Other members argued that these suggested remedies are not likely to be available. Any post-sentence motion or appeal that is filed by a fugitive defendant will be quashed due to fugitivity, and that, generally, a trial judge loses authority to enter an order in a case 30 days after the judgment of sentence pursuant to 42 Pa.C.S. § 5505. *Habeas corpus* would not be available because the *habeas corpus* statute specifically excludes any claims that might be covered by the PCRA and these challenges might be cognizable under the PCRA. However, a PCRA does not appear to be an adequate vehicle for these types of claims due to the fact that challenges cannot be filed while the defendant is a fugitive since the defendant must be in custody serving a sentence and, while the defendant may be able to raise this in a PCRA once taken into custody, he or she may be precluded from this remedy by the PCRA's severe time limitations.

The Committee concluded that the rules should provide explicit procedures to give a defendant a venue to seek this relief. Where a defendant is tried but not sentenced *in absentia*, the finding of absence without cause may be challenged at the sentencing hearing. This was based on a concept first proposed in a concurrence by Justice Papadakos in the case of *Commonwealth vs. Sullens*, 619 A.2d. 1349 (Pa. 1992). In that case, Justice Papadakos suggested an erroneous order permitting trial *in absentia* could be corrected when the defendant appears for sentencing and establishes good cause for his absence at trial, in which case a new trial will be awarded. However, the case in which a defendant is also sentenced *in absentia* was not addressed in *Sullens*. Ordinarily when such a defendant is arrested, because sentence has already been imposed, they normally would be taken for execution of sentence.

The Committee discussed the fact that when a defendant is tried *in absentia*, a bench warrant would have been issued against him or her. In that case, the defendant would be required to be brought before the judge who issued the bench warrant for a bench warrant hearing when apprehended. Initially it was thought that a challenge to the *in absentia* finding could be raised at the bench warrant hearing or at least the defendant could

be advised of the option of seeking relief from the *in absentia* finding. However, the Committee believed that a bench warrant hearing would be an inadequate venue for determining such an issue, particularly since the burden would be on the defendant to prove that his or her absence was with cause. Additionally, there was a concern that by combining the advice regarding *in absentia* relief with the bench warrant proceeding, there may be confusion for the defendant regarding the *in absentia* relief procedures. The Committee concluded that the advice regarding the motion procedure for *in absentia* challenges should be given at a separate proceeding, conducted by the sentencing judge or a judge designated by the president judge. In order for the defendant to understand the significance of this advice, particularly because this might be his or her last opportunity before the execution of his or her sentence, counsel must be present.

The defendant would have 30 days from the time of the advice proceeding to file the motion challenging the *in absentia* sentencing. As a logistical matter, the defendant should be kept within the geographical jurisdiction of the sentencing court during the 30 days in which he or she may file the motion. If no motion is filed, the defendant's sentence would be executed.

The provisions for seeking relief from an *in absentia* proceeding, either guilt determination or sentencing or both, would be included in a new paragraph (C) in Rule 602. Further explanation would be included in the Comment to Rule 602. A cross-reference to Rule 602(C) would be added to the Comment to Rule 150 to alert the judge conducting the bench warrant hearing that a defendant who had been sentenced *in absentia* will need to be scheduled for a Rule 602(C) proceeding.

[Pa.B. Doc. No. 17-1297. Filed for public inspection August 4, 2017, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Rules of Civil Procedure 1905; Administrative Order No. 13 of 2017

Order of Court

And Now, this 18th day of July, 2017, the Court hereby Orders the following amendment to the Adams County Rules of Civil Procedure:

Rule 1905. **Indirect Criminal Contempt Hearing.**

A. *Arrest.* When the Court is available, a defendant arrested for contempt shall be produced without unnecessary delay before a judge for **preliminary** arraignment. If arrest occurs when the Court is unavailable, the defendant shall **[be arraigned] have preliminary arraignment** before the on-call Magisterial District Judge. Upon request, defendant shall be provided with an application form for the appointment of a lawyer. Unless scheduled by a court order for a different time, contempt hearings shall be scheduled for 1:00 p.m. on the **[first business day of the week, at least seven (7) and no more than ten (10) days] Wednesday following preliminary arraignment which is the furthest**

Wednesday within ten (10) calendar days after the defendant's arrest. Bail shall be set by the Magisterial District Judge[, and] **with the** defendant given an opportunity to post bail. The bail may be subject to special conditions, such as **[cessation of abuse] requiring defendant to follow all specified conditions contained in the Protection From Abuse Order. [If the defendant is not released on bail, he or she shall be produced before a judge at the first available opportunity following arrest.]** The Magisterial District Judge shall also, when applicable, follow the procedure outlined in Pa.R.C.P. Rule 1901.

At the **preliminary** arraignment, the Magisterial District Judge **or Common Pleas Judge** shall advise the defendant of the following:

1. A description of the alleged contemptuous acts;
2. That those acts violate a specific Order of Court;
3. Defendant is subject because of the alleged contempt to a prison sentence of six (6) months and a fine of One Thousand Dollars (\$1,000.00);
4. A hearing will be held by a judge on a specified court business day at 1:00 p.m.;
5. Defendant is entitled to be represented by a lawyer in the contempt proceeding and that, if defendant qualifies, a lawyer will be appointed to represent him or her free of charge. The defendant shall be notified that he or she must apply for the appointment of a free counsel, and the Magisterial District Judge shall provide an application form upon request;

B. **[Petition and Rule: Plaintiff will first enter the petition in the Prothonotary's office and then present it to the Court Administrator for the scheduling of a hearing. Except in unusual circumstances, hearings will be scheduled in the same manner as in arrest cases. If a specific time is requested, the Court Administrator will select a time, which will afford speedy relief and afford defendant time to prepare a defense. No answer shall be required by defendant.**

C. *Criminal] Private Complaint[:].*

1. Plaintiff may file a private criminal complaint pursuant to 23 Pa.C.S.A. § 6113 by filing the complaint in the Prothonotary's Office. The Prothonotary's Office shall, after clocking in the complaint, immediately forward it to the Court Administrator for the scheduling of a hearing. **Except in unusual circumstances, hearings will be scheduled in the same manner as in arrest cases and shall be scheduled by court order. Service of the order, once entered, shall be made on the defendant by the Sheriff's Department. No answer shall be required by defendant.**

2. Contempt proceedings may be commenced by the filing of a criminal complaint before a Magisterial District Judge. Service shall be accomplished as in other criminal proceedings, by a constable, or police officer. If neither is available, the complaint shall be served by the Sheriff. **[Procedures will be the same as are followed in other protection from abuse proceedings begun before a Magisterial District Judge] Upon filing of a private complaint for criminal contempt in the office of a Magisterial District Judge, the Magiste-**

rial District Judge shall promptly forward the same to Court Administration who will schedule contempt hearing pursuant to paragraph B(1) above.

These rules shall become effective after all the provisions of the Pennsylvania Rules of Judicial Administration 103 are met, to include the following:

a. A copy of this order shall be submitted to the Civil Procedural Rules Committee for review to rulescommittees@pacourts.us;

b. Upon receipt of a statement from the Civil Procedural Rules Committee that the local rule is not inconsistent with any general rule of the Supreme Court, two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b), or other compliant format, containing the text of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. One copy of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts via e-mail to adminrules@pacourts.us.

d. A copy of the proposed local rule(s) shall be published on the 51st Judicial District website;

e. This Order shall be filed in the Office of the Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

f. The effective date of the local rule(s) shall be 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 17-1298. Filed for public inspection August 4, 2017, 9:00 a.m.]

ADAMS COUNTY

Rules of Civil Procedure 1905; Administrative Order No. 13A of 2017

Order of Court

And Now, this 21st day of July, 2017, after review by the Supreme Court of Pennsylvania Domestic Relations Procedural Rules Committee, the Court makes a correction to the proposed Civil Procedural Rule 1905(B)(1) as outlined in Administrative Order 13 of 2017, as follows:

Plaintiff may file a private criminal complaint pursuant to 23 Pa.C.S.A. § 6113.1 by filing the complaint in the Prothonotary's Office. The Prothonotary's Office shall, after clocking in the complaint, immediately forward it to the Court Administrator for the scheduling of a hearing. Except in unusual circumstances, hearings will be scheduled in the same manner as in arrest cases and shall be scheduled by court order. Service of the order, once entered, shall be made on the defendant by the Sheriff's Department. No answer shall be required by defendant.

In all other respects, Administrative Order 13 of 2017 remains in full effect.

The District Court Administrator is hereby directed to proceed to submit these proposed Rules to the *Pennsylvania Bulletin* for publication.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 17-1299. Filed for public inspection August 4, 2017, 9:00 a.m.]

CRAWFORD COUNTY

Courthouse and Judicial Center Security; Misc. MD 271-2017; Misc. AD 2017-466

Administrative Order

And Now, this 14th day of July, 2017, the Court has determined that for the safety of persons working in and conducting business in court offices located in the Crawford County Judicial Center and the Crawford County Courthouse, the Sheriff of Crawford County and his Deputy Sheriffs are best qualified and trained to provide protection within the facilities. Therefore it is hereby *Ordered* and *Decreed* that the provisions of 18 Pa.C.S.A. § 913 shall be enforced by the Crawford County Sheriff.

Consistent with the provisions of 18 Pa.C.S.A. § 913, firearms and dangerous weapons are strictly prohibited in the Crawford County Judicial Center and the Crawford County Courthouse except as permitted within the provisions of 18 Pa.C.S.A. § 913(c).

The Sheriff of Crawford County and his Deputy Sheriffs are authorized to conduct security screenings and reasonable searches of persons entering the Crawford County Judicial Center and the Crawford County Courthouse for the purpose of enforcing the provisions of 18 Pa.C.S.A. § 913.

All packages, briefcases, purses and any other containers in the immediate possession of persons entering the Crawford County Judicial Center or Crawford County Courthouse shall be subject to inspection. An initial search shall be conducted by requiring persons and property to pass through a walk through metal detector or x-ray machine as may be appropriate and a hand held metal detector may be moved in close proximity to all areas of the body of a person being searched as well as in close proximity to all areas of a package being searched.

If a metal detector emits an alert signal, the Sheriff or Deputy Sheriffs may conduct a pat down search of the immediate area of the body of the person being searched which activated the signal if they cannot ascertain otherwise what has caused the alert signal. A pat down search will be conducted only by a Sheriff or Deputy Sheriffs of the same gender as the person being searched. Any package or other item which indicates after the initial screening by x-ray or otherwise that any substances or contraband may be contained therein may be opened and searched by the Sheriff or Deputy Sheriffs in the presence of the person who brought the item into the building and in the event the Sheriff or Deputy Sheriffs need assistance from the person bringing the item into the building in conducting that search, the person shall cooperate in aiding the item to be searched. For the purposes of this

Order, a “dangerous weapon” and a “firearm” shall be defined in a manner set forth in 18 Pa.C.S.A. § 913(f).

It shall be the responsibility of the Sheriff of Crawford County in conjunction with the District Court Administrator to post notices as required by 18 Pa.C.S.A. § 913(d) conspicuously at the public entrance to the Crawford County Judicial Center and the Crawford County Courthouse. This Administrative Order shall take effect thirty (30) days after it is published in the *Pennsylvania Bulletin*.

By the Court

ANTHONY J. VARDARO,
President Judge

Administrative Order

And Now, this 14th day of July, 2017, the Court Orders and Directs that the Administrative Order related to security for the Crawford County Judicial Center and the Crawford County Courthouse shall be published forthwith in the *Pennsylvania Bulletin*.

It is further ordered that the Administrative Order regarding security shall be effective 30 days after publication thereof in the *Pennsylvania Bulletin*.

It is further ordered that in accordance with Pennsylvania Rules of Judicial Administration 103, the District Court Administrator shall:

(a) Distribute two paper copies of the Administrative Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. It shall also be distributed to the Legislative Reference Bureau a copy of the Administrative Order on a computer diskette, CD-ROM or other agreed upon alternate format that complies with the requirements of 1 Pa. Code § 13.11(b);

(b) File one copy of the Administrative Order with the Administrative Office;

(c) Publish a copy of the Administrative Order on the website for Crawford County when it becomes effective;

(d) Compile the Administrative Order within the Local Rules of Judicial Administration no later than 30 days following publication in the *Pennsylvania Bulletin*;

(e) Distribute a copy of the Administrative Order together with this Order to the Judges of the Court of Common Pleas of Crawford County, the Crawford County District Attorney, the Crawford County Sheriff and the Crawford County Commissioners.

By the Court

ANTHONY J. VARDARO,
President Judge

[Pa.B. Doc. No. 17-1300. Filed for public inspection August 4, 2017, 9:00 a.m.]

MERCER COUNTY

Local Rules of Court; No. 17-1

And Now, this 24th day of July, 2017, The Court Hereby Approves, Adopts and Promulgates the following Mercer County Local Rules Of Orphans' Court, Rules 1 through 15, inclusive. These Rules will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further Ordered and Directed that the Court Administrator of Mercer County shall file one (1) certified copy of this Order with the Administrative Office of Pennsylvania Courts and furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

It is further Ordered and Directed that these Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Mercer County and the Office of the Prothonotary of Mercer County. These Local Rules shall be published in the *Mercer County Law Journal*.

By the Court

THOMAS R. DOBSON,
President Judge

LOCAL RULES OF THE COURT OF COMMON PLEAS OF MERCER COUNTY, 35TH JUDICIAL DISTRICT

Supplementing the Orphans' Court Rules Promulgated by the Supreme Court of Pennsylvania

RULE 1. JUDGES—LOCAL RULES

Local Rule 1.3:1. Definitions.

In addition to those words and phrases defined by the Supreme Court Rules, the following words and phrases when used in these Local Rules unless the context clearly indicates otherwise shall have the meaning ascribed to them in this Local Rule:

“Hearing Judge” means that Judge to whom a motion, petition or other pleading is presented.

Local Rule 1.9. Costs.

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

Local Rule 1.10. Acknowledgment and Satisfaction.

Acknowledgment of satisfaction of all sums of money or property ordered to be paid or delivered by any award or decree of this Court shall be in writing and filed with the Clerk, or acknowledged in such other manner as the Court may require.

Local Rule 1.11. Certificates of Fiduciary Appointment.

The Clerk shall not issue a certificate of appointment of any fiduciary, excluding personal representatives, until the security, if any required, has been entered.

Local Rule 1.12. Witnesses. Attachment.

Attachment to compel the appearance of a witness will not be issued, except under special circumstances, and unless the witness shall have been served with a subpoena at least twenty-four (24) hours before the date for hearing.

Local Rule 1.13. Individual Sureties.

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

1. name, residence address;
2. location of any real property owned;
3. a brief description of the real estate and what it consists of;

4. how, or from whom, the real estate was obtained and when obtained;

5. that the surety or sureties do not contemplate selling of said property;

6. any encumbrance upon the real property;

7. the assessed value of the property for taxation purposes; and

8. a certification of the value of said property.

b. *Bond Without Surety. Confession of Judgment*—The Court, in its discretion may permit an interested party to execute an individual bond, without surety. When an interested party is authorized to execute an individual bond or individual surety is approved, the Court may direct that the bond to be executed contain a warrant of attorney to confess judgment, with or without default, and that judgment thereon be entered of record in the Office of the Prothonotary.

Local Rule 1.14. Corporate Sureties.

a. *In General*—Surety companies duly authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in Court.

b. *Exceptions*—Except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

Local Rule 1.15. Assets and Investments.

a. *Segregation and Designation of Assets*—Assets held by individual fiduciaries subject to the jurisdiction of the Court shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such.

b. *Deposit of Uninvested Funds*—All funds held uninvested shall be deposited in a bank or banks, or trust company or trust companies, the deposits of which are insured by the Federal Deposit Insurance Corporation in such manner as to obtain the maximum deposit insurance coverage.

Local Rule 1.16. Court Depository.

a. *Official Depository*—The Court will, from time to time, designate a banking institution as the official depository of the Court.

b. *Deposits*—Monies and securities paid or delivered into the Court shall immediately, upon the receipt thereof by the Clerk, be deposited with the Court depository or credited to the proper estate or proceeding. The depository shall keep separate accounts for each payment and delivery and designate each by name of the proper estate or proceedings.

c. *Withdrawal Orders*—No money shall be paid or delivered by such depository except upon the check or order of the Clerk, countersigned by a Judge of the Court, and accompanied by a certificate endorsed on the check or order, under the hand of the Clerk and the seal of the Court, that the money or property was ordered to be paid or delivered.

d. *Accounting by Clerk*—Each year, or at such other times as the Court may direct, the Clerk shall have the bank or deposit book settled by the depository and shall make and present to the Court an account of the monies paid into and out of the account, and shall exhibit the deposit book as a voucher for the correctness thereof.

Local Rule 1.17. Termination of Inactive Cases.

During the month of April of each year, the Clerk of the Orphans' Court shall determine in which matters not concluded there has been no activity during the previous two years. The Clerk of the Orphans' Court shall then give notice in each such matter as provided by Pa.R.J.A. 1901(c). If no action is taken, or no written objection stating good cause is filed in such matter within 30 days, the Clerk of the Orphans' Court shall enter an order terminating the matter. If written objection is filed in such matter within 30 days, the Clerk of the Orphans' Court shall list the matter for the next available Argument List without further praecipe and give notice to all parties. Failure of any party to appear and to show good cause may result in the dismissal of the action.

Where publication is required, such publication shall be twice printed in the *Mercer County Law Journal*.

Local Rule 1.18. Argument Court.

a. *Time*—Argument Court shall be held on the first Monday of each month unless otherwise specially ordered by the Court in any particular case.

b. *Listing and Notice thereof*—All cases for argument shall be placed on the Argument List at least thirty (30) days prior to the argument by praecipe to the Clerk. A copy of the praecipe ordering the case on the Argument List shall be sent to the opposing counsel and to the Court Administrator by the party placing the case on the Argument List, which praecipe shall include the name of the opposing counsel and whether the matter listed requires the taking of testimony.

c. *Scheduling*—The Court Administrator shall give notice to all counsel that the case has been placed on the Argument List and said notice shall contain the date upon which argument will be held. The Argument List shall also be published in the *Mercer County Law Journal*.

d. *Briefs*—At least fifteen (15) days before the date of Argument Court, it shall be the duty of counsel for the rule or motion, or petitioner, objector or party filing preliminary objections, to serve on adverse counsel a typewritten brief on paper 8 1/2 inches by 11 inches in size, double spaced, except for quotations containing a concise statement of the relevant facts, the questions involved, the argument, and the authorities relied upon. Counsel for the adverse party may prepare a brief which need only contain an argument and authorities relied upon, but counsel may add a counter statement of the facts, and a counter statement of the questions involved. Unless counsel does so, however, it will be assumed counsel is satisfied with them or such parts of them as remained unchallenged. At least five (5) days before Argument Court, counsel shall serve a copy of the reply brief upon opposing counsel, and copies of both briefs shall be delivered to the Court Administrator at least five (5) days before Argument Court. If either party fails to file a brief in accordance with these Local Rules, the Court shall dispose of the argument without brief.

RULE 2. ACCOUNTS, OBJECTIONS AND DISTRIBUTION

Local Rule 2.5:1. Contents of Notice. Additional Requirements.

The notice to interested parties shall set forth the date on which the account will be confirmed, and that the account will be confirmed unless objections are filed before the account is confirmed.

Local Rule 2.5:2. Advertisement of Accounts.

All accounts required by law to be filed with the Clerk shall be advertised by the Clerk in the manner prescribed by law and shall also state that unless objections are filed before the date set for confirmation, the account will be approved 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.

Local Rule 2.5:3. Notice and Advertisement.

Notice and advertisement of a statement of proposed distribution shall be given at the same time and in the same manner as the account as provided in Local Rules 2.5:1 and 2.5:2.

Local Rule 2.9:1. Accounts.

The accounts of fiduciaries shall be presented to Court for confirmation at the date and time set for confirmation of accounts by the Court as set forth in the Annual Court Calendar, unless otherwise directed by the Court.

Local Rule 2.9:2. Confirmation.

a. Unless objections are filed in accordance with Orphans' Court Rule 2.7, the confirmation of accounts and statements of proposed distribution filed with accounts shall be confirmed. The confirmation of the account and any statement of proposed distribution filed with the account shall be placed upon the record by the Clerk.

b. No account, or statement of proposed distribution filed with any account, shall be considered finally approved except by written affirmation by the Clerk as hereinbefore provided or by order of Court; and such final approval, if relating to a statement of proposed distribution filed with any account, shall expressly state that it is a final confirmation of the account and the statement of proposed distribution filed therewith.

Local Rule 2.9:3. Form of Statement of Proposed Distribution.

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

Local Rule 2.9:4. Confirmation of Title to Real Property.

a. *In General*—When the account and the statement of proposed distribution filed therewith has been finally affirmed as hereinbefore provided, such affirmation shall be in the nature of confirmation of title to real property in the respective distributes.

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

c. *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.

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

Local Rule 2.9:5. Distribution Without Audit.

After confirmation of the account, the Court, on motion or petition, may decide that the matter does not call for reference to an auditor and may decree distribution

substantially in conformance with the statement of proposed distribution filed with the account, provided such motion or petition is accompanied by:

1. an affidavit or verification by the accountant or one of the next of kin or beneficiaries stating the names and addresses of all the beneficiaries, and that they are all sui juris, or if not, the names and addresses of their fiduciaries;

2. a statement by the attorney for the accountant that the schedule of distribution is correct and in accordance with law; and

3. a proposed decree of distribution.

Local Rule 2.10. Report by Fiduciary.

The report required by the Supreme Court Rules shall be submitted to the Court or to an auditor appointed by the Court, and shall include substantially the following:

1. *Unknown Distributee*—If it appears that the identity or whereabouts of a distributee is unknown, or there are no known beneficiaries, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or his counsel, setting forth:

A. The nature of the investigation made to locate the beneficiaries or heirs of the decedent, in complete detail; and

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

2. *Investigation Defined*—The term "investigation" as used in this Local Rule, shall include inquiry of or as to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; labor union membership; places of employment; social fraternal, or beneficial organization; insurance records; church membership; school records; social security, Veterans' Administration, or military service records; naturalization records, if not native born; and such other sources of information as the circumstance may suggest.

3. *Non-Resident Distributee*—If the fiduciary requests the Court to withhold distribution to a non-resident distributee, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or the fiduciary's counsel, which shall set forth:

A. the relationship of the distributee to the decedent, and any available information concerning the distributee's present whereabouts;

B. in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and

C. the reason for the request that distribution be withheld, and the suggested manner of withholding.

Local Rule 2.11:1. Appointment and Duties of Official Examiners.

In the exercise of its visitorial and supervisory powers over charitable trusts the Court will, in its discretion, from time to time, by general rule or special order, direct the official examiner, or a special examiner appointed for the purpose, to make an examination of the assets of a designated trust and an investigation to determine whether the purposes of the trust are being carried out in the manner provided by the trust instrument; and to submit to the Court a written report thereon which shall

follow as nearly as may be the form prescribed by these Local Rules for a master's report and shall contain specific recommendation for the Court's consideration.

Local Rule 2.11:2. Compensation of Official Examiners.

a. *In General*—Each estate or trust shall be liable for the compensation of the examiner based upon a schedule of fees fixed by the Court. In special circumstances, the compensation of the examiner will be fixed by special order of the Court.

b. *Charitable Trusts*—Each charitable estate or trust shall be liable for the compensation of the examiner in such amount as the Court shall specifically fix in each case.

RULE 3. PETITION, PRACTICE AND PLEADINGS

Local Rule 3.1:1. Hearing Judge.

When a proceeding on a particular estate or matter has been previously heard by a Hearing Judge, all subsequent proceedings pertaining to the same estate or matter, whenever possible, shall be presented to the same Hearing Judge.

Local Rule 3.1:2. Hearings.

Petitions and motions shall have attached thereto a proposed order of Court, which shall be prepared by the party presenting the petition or motion, and which shall include a date and time for a hearing and for the taking of testimony, if necessary.

RULE 5. RULES COVERING SPECIFIC TYPES OF PETITIONS

Local Rule 5.2:1. Appraisal.

a. *When Appraisal Unnecessary*—Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed:

1. from personal property; or
2. wholly or in part from real estate, if all parties in interest agree on the valuation.

b. *Procedure for Appraisal When Required*—

1. Upon petition the Court may appoint two (2) appraisers who shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

2. Upon the filing of the appraisal with the Clerk, the appraisers shall also give notice thereof to the personal representative and to the next of kin; and, if there be neither personal representative nor next of kin, to the Attorney General.

3. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal will be requested and may be allowed by the Court at a stated date, and unless objections are filed thereto, the appraisal shall be confirmed thereafter by the Clerk without further Order of Court. Said notice shall be given by the petitioner not less than twenty (20) days prior to the date set for confirmation.

Local Rule 5.2:2. Voluntary Distribution.

When the personal representative, at his own risk, delivers assets of the estate in satisfaction of the exemption, he shall set forth the same as a credit in the account. The same may be the subject of objection by any claimant of interested party.

Local Rule 5.2:3. Conclusiveness of Averments.

If the averments of the petition are not conclusive as to the right of the individual to the allowance being claimed, the matter may be referred to a master, auditor, or to a Hearing Judge.

Local Rule 5.2:4. Appraisal. Notice. Practice and Procedure.

a. *Filing of Appraisal*—The appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

b. *Notice of Appraisal*—Upon the filing of the appraisal, notice thereof shall be given to the personal representative and to the next of kin, and if there be neither personal representative nor the next of kin, to the Attorney General. The notice shall contain a copy of the petition and appraisal, and a statement that confirmation of the appraisal will occur on a stated date and the setting apart of the real estate to the individual who will be requesting the family exception and may be allowed by the Court at a stated time, and unless exceptions are filed before the date of confirmation. Said notice shall be given not less than twenty (20) days prior to the date set for confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.

c. *Confirmation and Setting Apart of Allowance*—Unless exceptions are filed, the appraisal and award of real estate shall be confirmed.

d. *Objections*—Objections to an appraisement shall be filed with the Clerk before confirmation. Copies of the objection shall be served on the fiduciary, if any, and on the individual who will be requesting the family exemption or their attorney within five (5) days after filing. If objections are filed, the matter may be placed on the Argument List by praecipe for disposition.

e. *Claim for Money*—If the entire claim is for money, which need not be appraised, claim may be made at or before the audit of the fiduciary's account, provided no payment shall be made to the spouse until it appears that the money claimed is not required for payment of debts.

Local Rule 5.4:1. Extension of Time. Contents of Petition.

A petition for the extension of time in which the surviving spouse may file an election to take against the Will shall comply with all existing Orphans' Court Rules.

Local Rule 5.4:2. Extension of Time. Practice and Procedure.

The petitioner shall file the petition with the Clerk and thereafter given twenty (20) days written notice of intention to request the extension at a stated day to all persons adversely affected thereby who do not join in the prayer of the petition. In the absence of objection, upon the presentation of a Certificate of Service on or after said day, an appropriate decree may be entered by the Court.

Local Rule 5.5:1. Guardians and Trustees Ad Litem. Appointment and Compensation.

Each estate shall be liable for the compensation of the guardian ad litem or the trustee ad litem based upon a schedule of fees fixed by the Court. In special circumstances, the compensation of the guardian ad litem or the trustee ad litem will be fixed by special order of the Court.

Local Rule 5.6:1. Information Required from Counsel.

At the time of the presentation of the petition for the appointment of an individual guardian, for a minor's estate, counsel shall state the following in court:

1. the total amount of the assets;
2. whether or not the minor resides in the same household with the proposed guardian; and
3. whether it is proposed to deposit the share of the minor in a restricted account.

Local Rule 5.6:2. Minor's Estate. Restricted Account.

a. *Waiver of Security*—In lieu of the entry of security, the Court, in the decree appointing the guardian, may authorize the guardian to deposit the funds of the minor in an interest-bearing deposit insured by the Federal Deposit Insurance Corporation subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without order of Court, with a further requirement that the evidence of the deposit or investment, marked to indicate the restriction, shall be promptly exhibited to the Court.

b. *Limitation*—The deposit under paragraph (1) of this Local Rule shall not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S. § 5103).

c. *Payment at Majority of Minor*—

1. The decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains his majority, upon the joint agreement of the guardian and the former minor without further order of the Court.

2. If, upon subsequent order of the Court, withdrawals have been made from the account during minority, the guardian shall file a petition for discharge upon the minor attaining his majority. There shall be attached to the petition:

A. an affidavit or verified statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated;

B. an affidavit or verified statement by the guardian setting forth the date the minor attained his majority; that he has examined the account, that he has received the money, or benefit of the money, for which credit is taken in the account; that he approves the account and requests that it be confirmed; and that, upon distribution to him of the balance shown thereon, subject to such additional credits as may be authorized by law and set forth in the petition and order, he agrees that the guardian shall be discharged.

d. *Additional Assets*—When the guardian has received assets in addition to the deposit or investment made in accordance with this Local Rule, he shall account as if the restricted account did not form part of the estate.

Local Rule 5.6:3. Minor's Estate Not Exceeding Statutory Limitation.

a. *Disposition. In General*—If the value of the real and personal estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103), the Court may:

1. authorize payment or delivery thereof to the minor or the parent or other person maintaining the minor;

2. direct the deposit of the minor in a restricted account in the name of a natural guardian of the minor or of the minor individually; or

3. make such provision for the retention or deposit of securities or other assets as the Court shall deem for the best interests of the minor.

b. *Mortgage or Sale of Real Property*—If the value of the entire estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103), the Court upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the provisions governing the same or mortgage of real property by a guardian. The order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

Local Rule 5.6:4. Minor's Estate. Allowances.

a. *In General. Responsibility of Guardian*—Expenditures from income for the benefit of the minor, and counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.

b. *Permissive Petition*—The guardian may petition the Court for approval of periodical payments from income needed for the maintenance, support, or education of the minor, the minor's spouse or children.

c. *Mandatory Petition*—Except as provided in paragraph (1) of this Local Rule, unless approval by the Court is first obtained, no payments shall be made by the guardian when payment is to be made from principal, or when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

d. *Contents of Petition. Allowance for Maintenance, Support, or Education*—A petition for an allowance from a minor's estate for the maintenance, support or education of the minor, the minor's spouse or children, shall set forth:

1. the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;

2. the age and residence of the minor; whether the minor's parents are living; the name of the person with whom the minor resides, and, if married, the name and age of the minor's spouse and children;

3. the value of the minor's estate, real and personal, and the net annual income;

4. the circumstances of the minor, whether employed or attending school; if the minor's parents, or the person charged with the duty of supporting him, are living, the financial condition and income of such person and why they are not discharging their duty to support the minor; and whether there is adequate provision for the support and education of the minor, or the minor's spouse and children;

5. the date and amount of any provision previously allowed by the Court, and the name of the Judge who granted it;

6. the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; and

7. if the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any given by him/her for his/her failure to do so.

Local Rule 5.8:1. Discharge of a Fiduciary. Additional Provisions.

a. *Affidavit or Verification*—The affidavit or verified statement to the petition shall include an averment that the parties who have signed the consents to discharge are all interested parties in the estate, or the reason for the failure of any party to consent. If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notices by citation or otherwise.

b. *Exhibits. Consent*—Written consent of all interested parties, and of the surviving or successor fiduciary, shall be attached to the petition. Such consent may be included in a satisfaction of award attached to the petition.

c. *Discharge of a Personal Representative*—When the value of the gross, real, and personal estate of a decedent does not exceed the value of the statutory limitation, the personal representative, after the expiration of one (1) year from the first complete advertisement of the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the Probate, Estate and Fiduciaries Code (20 Pa.C.S.A. § 3531). The petition shall conform as far as practicable to the requirements of a petition under Supreme Court Orphans' Court Rules.

Local Rule 5.9:1. Partition. Additional Provisions.

The fiduciary selling real property in a partition proceeding shall file an account after the sale is completed. The Court may dispose of the matter or may appoint an auditor to ascertain whether there are any liens or other encumbrances on such real property affecting the interests of the parties.

RULE 9. AUDITORS AND MASTERS

Local Rule 9.1:1. Notice of Hearings.

a. *Original Hearing*—Twenty (20) days notice of the time and place of the first hearing before the auditor or master shall be served, in writing, on all known heirs, devisees, unpaid legatees, and distributees, or their attorneys, and to all others by advertisement in one newspaper of general circulation within the county and the *Mercer County Law Journal* once a week for three (3) consecutive weeks prior to the date of the hearing, unless notice be dispensed with by agreement of all interested parties, or by order of Court. Auditors and masters shall state in their report the manner and to whom notice was given.

b. *Subsequent Hearings*—Notice of succeeding hearings given by the auditor or master, at a hearing or which prior notice has been given, shall constitute sufficient notice of such succeeding hearings.

Local Rule 9.6:1. Notice of Filing Report. Preliminary Objections.

After the report is prepared, the auditor or master shall serve on the parties, or their attorneys, twenty (20) days written notice of the day fixed for filing the same and in the meantime, such parties shall be allowed access thereto. Any party interested may file preliminary exceptions to the report, before the day fixed for the filing thereof. If preliminary exceptions are filed, the auditor or

maser shall re-examine the report and amend the report if the preliminary exceptions are, in whole or in part, well founded. If the report is not filed at the time fixed therefore in said notice, said report shall only be filed after five (5) days written notice is given to the parties, or their attorneys. The auditor or master shall certify in the report the manner and time of serving the notice herein required.

Local Rule 9.7:1. Confirmation of Auditor's Reports. Objections.

All reports of auditors shall be filed in open court at the time and date set by the auditor, pursuant to these Rules. Upon the filing of the report, it shall be confirmed nisi, which confirmation shall be made absolutely by the Clerk without further order of Court, unless exceptions thereto are filed.

Local Rule 9.7:2. Confirmation of Master's Reports. Objections.

All report of masters shall be filed in open court at the time and date set by the master pursuant to these Rules. Upon the filing of the report, the Court shall enter a decree nisi either adopting the master's recommendations or rejecting the same. A decree nisi shall be made final by the Clerk without further order of Court, unless exceptions thereto are filed.

Local Rule 9.7:3. Approval of Expenses and Fees prior to Confirmation.

No auditor's or master's reports shall be confirmed or otherwise approved until such time as the Court shall have entered an order approving the amount of expenses to be reimbursed until and the amount of fees to be awarded until the auditor or master. The Court may assess said expenses and fees upon any party in interest, as it deems fit.

Local Rule 9.8:1. Absolute Confirmation. Auditor's and Master's Expenses and Fees.

No master's or auditor's report shall be confirmed by the Clerk until all expenses and auditor's or master's fees have been paid to the Clerk. Upon confirmation, the Clerk shall pay all expenses and the balance of the auditor's or master's fee to the auditor or master, after deducting ten percent (10%) of the auditor's or master's fee to be paid to the treasurer of the Mercer County Bar Association.

RULE 10. REGISTER OF WILLS

Local Rule 10.4:1. Notice of Appeal.

Any person desiring to appeal from a judicial act or decision of the Register shall file a written notice thereof with the Register, specifying generally the act or decision complained of, accompanied by an affidavit or verification that said appeal is not taken for delay, but because appellant believes that injustice results from the act or decision which is appealed.

Local Rule 10.4:2. Petition for Appeal.

Within thirty (30) days from the filing of the notice of appeal, the appellant shall present a petition to the Court which shall set forth:

1. the nature of the proceedings before the Register;
2. a copy of any Will in controversy;
3. a statement of the facts and circumstances relied upon;
4. a precise statement of the questions of law or of fact involved;

5. the filing and approval by the Register of the security required by law; and

6. the names and addresses of all interested parties.

Local Rule 10.4:3. Certification and Citation.

a. If the averments of the petition for appeal appear to be prima facie sufficient, the Court shall award a citation and, if it has not been done by the Clerk on his/her own motion, order certification of the entire record of the Clerk to the Court. The citation shall be directed to all interested parties and shall require them to file a complete answer under oath or verification to the averments of the petition, on or before a day certain which shall not be less than twenty (20) days after the service thereof, and to show cause as the decree of the Court shall provide.

b. Proof of service of the citation shall be filed with the Clerk on or before the return date of the citation.

Local Rule 10.4:4. Argument List and Hearing.

After the return date of the citation, any party may place the matter on the Argument List for the purpose of fixing a time for taking any testimony required to support the issue or for the argument of any legal issue raised by the pleadings. After the testimony has been transcribed and filed, any party may place the matter on the Argument List for purposes of argument.

Local Rule 10.4:5. Grant of Jury Trial.

a. *Determination by Judge*—The Hearing Judge shall determine whether a jury trial will be granted upon any issue of fact arising upon the certification of appeal.

b. *Decree*—If a jury trial is granted, the decree shall specify the issues to be tried, which may be agreed upon by the parties or as the Hearing Judge shall determine.

RULE 14. INCAPACITATED PERSON'S ESTATES

Local Rule 14.2:1. Incapacitated Person's Estate. Proof of Service.

Proof of service of notice shall be presented at the hearing. The affidavit or verification of service shall, in all cases, recite that the petition and citation were read to the alleged incapacitated person. When the alleged incapacitated person is in a hospital, service may be made by a physician in charge.

RULE 15. ADOPTIONS

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

A petition for adoption shall have attached thereto:

A. A scheduling order in conformance with the applicable statute; and

B. A proposed decree of adoption.

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