

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendment of IOLTA Board Regulations; No. 153 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 7th day of August, 2017, it is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Regulations for the Pennsylvania Interest on Lawyers Trust Account Board in Subchapter B (Rules for Interest on Lawyers Trust Accounts) and Subchapter C (Minor Judiciary Interest on Trust Accounts) are amended in the following form.

To the extent that notice of proposed rulemaking would otherwise be required by Pa.R.J.A. No. 103, the immediate promulgation of the amendments is found to be in the interests of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendments herein shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter B. RULES FOR INTEREST ON LAWYERS TRUST ACCOUNTS

§ 81.101. Definitions.

The following words and phrases when used in these [**regulations**] **Regulations** shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Comparability Guidance.—Guidance developed and updated from time to time by the IOLTA Board which addresses how Eligible Institutions should determine the comparable interest or dividend rate to be applied to IOLTA Accounts. This guidance is made available online at www.paiolta.org and may also be obtained by writing to the IOLTA Board at P.O. Box 62445, Harrisburg, PA 17106-2445.

Eligible Institution.—An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to Pa.R.D.E. 221(h).

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[**Good faith**] **Good Faith.**—Honesty in fact in the conduct or transaction concerned.

Interest on [Lawyer] Lawyers Trust Account (IOLTA) Account.—An IOLTA Account is an [**income produc-**

ing] **income-producing** Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account.

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Non-IOLTA Account.—A Non-IOLTA Account is an [**income producing**] **income-producing** Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:

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§ 81.105. Eligible Institutions.

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(b) In order to be approved as an Eligible Institution, the Financial Institution must comply [**not only**] with applicable provisions of Pa.R.P.C. 1.15, [**but also**] Pa.R.D.E. 221, **and the Regulations contained in this subchapter.**

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(e) Acceptable account title: The lawyer must specifically identify an IOLTA [**account**] **Account** with the words “IOLTA Trust Account” or “IOLTA Escrow Account” and the name of the lawyer or the law firm who maintains the account in the main title of the account.

(f) Acceptable title on checks/deposit slips: The word “IOLTA” need not be placed on checks or deposit slips.

(g) Provision of Information[.]: The Eligible Institution must provide the following information to the IOLTA Board and to the lawyer who maintains the IOLTA Account at the time of each remittance:

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§ 81.106. Income on IOLTA Accounts.

(a) The rate of interest or dividend paid on IOLTA Accounts shall be not less than the highest rate of interest or dividend generally available from the Eligible Institution to non-IOLTA customers when the IOLTA Account meets the same minimum balance or other **account** eligibility qualifications.

(b) An Eligible Institution shall be deemed to have satisfied the requirements of subsection (a) of this regulation only if the Eligible Institution is in compliance with the Comparability Guidance published by the IOLTA Board from time to time.

(c) [**Each Eligible Institution shall file with the IOLTA Board a Compliance Certification Form, certifying compliance with Comparability Guidance in effect from time to time. The Eligible Institution shall be responsible for filing a new Compliance Certification Form when information previously provided to the IOLTA Board becomes inaccurate.] Each Eligible Institution shall submit to the IOLTA Board for review and approval a Compliance Certification Form, which identifies the rate of interest or dividend to be paid on IOLTA Accounts and certifies the Eligible Institution’s compliance with the IOLTA Regulations and Comparability Guidance. Prior to changing a rate of interest or divi-**

dend that was previously approved by the IOLTA Board, or when the rate of interest or dividend for comparable products exceeds the rate listed in the Eligible Institution's most recently approved Compliance Certification Form, the Eligible Institution shall submit a new Compliance Certification Form to the IOLTA Board for review and approval.

(d) Remittance of income: All income earned under the IOLTA program must be remitted to the IOLTA Board at least every quarter. Eligible Institutions shall honor requests by the IOLTA Board to recover income that was not remitted to the IOLTA Board, in accordance with the Eligible Institution's most recently approved Compliance Certification Form, during the twelve months preceding the IOLTA Board's request.

§ 81.112. Refunds.

(a) The IOLTA Board may return income paid to the IOLTA Board under certain circumstances. **[If] For example, if a lawyer mistakenly places Nonqualified Funds in an IOLTA Account, or if the lawyer reasonably believed that Rule 1.15 Funds were Qualified Funds, but the Rule 1.15 Funds were in fact not Qualified Funds, then the lawyer may apply for a refund of income paid to the IOLTA Board. Additionally, if an Eligible Institution erroneously remits to the IOLTA Board income that should have been properly directed to a different jurisdiction's interest on lawyers trust account program, then the impacted lawyer, financial institution, or other jurisdiction's interest on lawyers trust account program may apply for a refund of the income paid to the IOLTA Board.**

(b) The following guidelines apply to **[applications for return of income]** requests for a refund:

(i) **[The lawyer must make the application in writing on firm letterhead.] All requests must be made on the letterhead of the party making the request (i.e., the impacted lawyer, financial institution, or other jurisdiction's interest on lawyers trust account program), and all requests must set forth in reasonable detail the basis for the requested refund.**

(ii) **[The application] Requests** must be accompanied by verification **[from] of the income paid for which a refund is sought. Verification must be made by** the Eligible Institution **[in]** at which the IOLTA Account is maintained **[of the income earned on the Rule 1.15 Funds for which a refund is sought]**. As needed for auditing purposes, the IOLTA Board may request additional documentation.

(iii) **[The application must be received by the IOLTA Board within six months after the Rule 1.15 Funds have been disbursed from the IOLTA Account.] The IOLTA Board will only consider requests where the income to be refunded was received by the IOLTA Board during the twelve-month period prior to the IOLTA Board receiving the written request for a refund.**

(iv) **[The refund will be remitted to the lawyer for his/her distribution to the Third Party Owner. The IOLTA Board will issue an IRS (Internal Revenue Service) form 1099 to the lawyer who, in turn, is responsible for issuing an IRS form 1099 to the Third Party Owner.] Refunds will be remitted**

through the Eligible Institution that transmitted the income to the IOLTA Board unless an alternative method is requested and agreed to by the IOLTA Board.

(v) If the Eligible Institution has imposed a service charge with respect to the **[deposit] IOLTA Account**, only the net amount of income paid to the IOLTA Board (reduced by applicable service charges) will be refunded.

(vi) The IOLTA Board may **impose and** deduct a processing charge from the refund.

Appendix A

The Pennsylvania Interest on Lawyers Trust Account Board

Promulgated by the Pennsylvania Interest on Lawyers Trust Account Board and Approved by the Supreme Court of Pennsylvania

These **[regulations] Regulations** are to be read and applied in connection with the Pennsylvania Rules of Professional Conduct. Nothing in these **[regulations] Regulations** shall be construed to relieve a lawyer of any provision of the Pennsylvania Rules of Professional Conduct. Where these **[regulations] Regulations** contain directives pertaining to the Interest on Lawyers Trust Account program which are more specific than those set forth in the Pennsylvania Rules of Professional Conduct, the provisions of these **[regulations] Regulations** shall control.

Questions and Answers Concerning Pennsylvania IOLTA

STATEMENT OF PURPOSE

The following is a representation of the questions most frequently asked of the Pennsylvania Interest on Lawyers Trust Account Board (the "IOLTA Board") and the answers given. Some of the answers paraphrase the actual Rules of Professional Conduct or Regulations of the IOLTA Board. Reference should be made to the Rules and to the Regulations when appropriate.

What is the Basic Concept of IOLTA?

Clients and third persons frequently transfer monies to lawyers to hold. Rule 1.15 of the Pennsylvania Rules of Professional Conduct generally requires the lawyer to deposit all monies of clients and third persons ("Rule 1.15 Funds") in a Trust Account. When the amount is large or if the funds will be held for an extended period of time, lawyers invest them for the benefit of the owner. These funds are known as Nonqualified Funds. But when the funds are nominal in amount or expected to be held for a short time, they cannot practically be invested to benefit the owner of the funds. These funds are Qualified Funds.

Rule 1.15 of the Pennsylvania Rules of Professional Conduct requires a lawyer to deposit Qualified Funds in a particular type of Trust Account: an **[income producing] income-producing IOLTA Account**. The result is that funds that would otherwise earn no income can be put to constructive use.

The lawyer's Eligible Institution transfers the income earned on IOLTA Accounts ("IOLTA Funds"), no less frequently than quarterly, to the IOLTA Board. The IOLTA Board distributes the IOLTA Funds for the delivery of civil legal assistance to the poor and disadvantaged, educational legal clinical programs and internships

administered by law schools, the administration of justice, and for the administration and development of the IOLTA program.

How do lawyers comply with the IOLTA requirements of Rule 1.15?

IOLTA Accounts may be maintained only at Eligible Institutions approved by the Supreme Court of Pennsylvania.

An "Enrollment Form for Lawyers and Law Firms" can be used to direct the Eligible Institution to open or convert one or more of the lawyer's Trust Account(s) to [**income producing**] **income-producing** IOLTA Accounts. Submit the second copy of the enrollment form, along with a list of all the lawyers who use the IOLTA Account in the regular course of their practice, to the IOLTA Board.

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Are any exemptions from IOLTA participation allowed?

Yes, a lawyer may apply for an exemption from the requirement that all Qualified Funds be placed in an IOLTA Account. However, the exemption will be granted by the IOLTA Board only for one of the reasons specified in Rule 1.15. Write to the IOLTA Board if you believe any of the permitted exemptions apply. Exemptions will be granted if:

[(A) the nature of the lawyer's practice does not require the routine maintenance of a Trust Account in Pennsylvania;

(B) the establishment of an IOLTA Account would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest Eligible Institution or on other compelling and necessitous factors;

(C) the lawyer's historical annual Trust Account experience, based on information from the Eligible Institution in which the lawyer deposits Rule 1.15 Funds, demonstrates the service charges on the Trust Account would significantly and routinely exceed any income generated.]

(i) **Low balance account:** If the average daily balance of your current IOLTA Account, as measured over twelve months, is less than \$5,000, you may request an exemption.

(ii) **Account service charges routinely exceed income:** If the bank service charges assessed on your current IOLTA Account routinely exceed the income earned, you may request an exemption.

(iii) **Extreme impracticality or undue hardship:** Under limited circumstances it would be unduly burdensome for a lawyer to maintain a Trust Account as an IOLTA Account. An example includes the lack of an Eligible Institution that offers IOLTA Accounts in the lawyer's geographical location.

(iv) **Other compelling and necessitous reasons:** There may be compelling and necessitous reasons justifying an exemption from the requirement that the lawyer maintain a Trust Account as an IOLTA Account. A lawyer who demonstrates a compelling and necessitous reason for not complying with the IOLTA Board Regulations may request an exemption. A philosophical objection to the IOLTA Pro-

gram or the IOLTA Board Regulations does not constitute a compelling and necessitous reason for an exemption.

What funds are to be placed in IOLTA Accounts?

Qualified Funds are monies of a client or third person received by a lawyer, that in the [**good faith**] **Good Faith** judgment of the lawyer, are nominal in amount or which the lawyer reasonably expects to be held for such a short period of time that sufficient income will not be generated to justify the expense of earning income to benefit the client or third person.

A lawyer will not be liable for damages or held to have breached his or her professional responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in [**good faith**] **Good Faith** that the monies are Qualified Funds.

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How does the IOLTA program affect financial institutions?

Financial [**institutions**] **Institutions** are not mandated to participate in IOLTA. However, [**financial institutions**] **Financial Institutions** that wish to offer Trust Accounts into which lawyers can deposit Rule 1.15 Funds (whether Qualified or Nonqualified Funds) must be approved by the Supreme Court of Pennsylvania. A list of Eligible Institutions can be obtained from the Disciplinary Board.

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What if a lawyer mistakenly deposits funds which are not Qualified Funds into an IOLTA Account?

As long as the lawyer used [**good faith**] **Good Faith** judgment, the lawyer will not be liable in damages for placing Nonqualified Funds into an IOLTA Account, nor will the lawyer be held to have breached any fiduciary duty or responsibility because monies were deposited into an IOLTA Account. Additionally, if timely requested, a refund of income earned on an IOLTA Account and received by the IOLTA Board attributable to the mistaken deposit, net of an administrative charge, will be [**made to the lawyer for distribution to the Third Party Owner**] returned to the remitting Eligible Institution, unless an alternative method is approved by the IOLTA Board.

May all lawyers in a law firm use the same IOLTA Account?

Yes. If a law firm established an IOLTA Account, each lawyer who deposits all Qualified Funds in that account will be deemed to be in compliance with IOLTA. This account must be set up according to IOLTA [**regulations**] **Regulations**. Each lawyer is ultimately responsible to ensure that he or she is in compliance with IOLTA.

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Must a lawyer who receives funds of clients or third persons other than in connection with a client-lawyer relationship deposit those funds in a Trust Account, including an IOLTA Account?

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Rule of Professional Conduct 5.7 provides that a lawyer is subject to the Pennsylvania Rules of Professional Conduct with respect to the provision of both legal and nonlegal services if a lawyer provides nonlegal services that are not distinct from legal services. Rule of Profes-

sional Conduct 5.7(e) defines “nonlegal services” as “services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a [non lawyer] nonlawyer.” Even if the nonlegal services are distinct from legal services, the lawyer is still subject to the Rules of Professional Conduct: (i) if the lawyer knows or reasonably should know that the recipient of the services might believe that the recipient is receiving the protection of a client-lawyer relationship, or (ii) if the lawyer is an owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services and the lawyer knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship. In each of these cases, the lawyer will be subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed with the recipient of the services. The lawyer then must deposit all funds of the client or a third person which are received in connection with that relationship in a Trust Account, regardless of whether the funds resulted from legal or nonlegal services. If the funds are Qualified Funds, those funds are to be placed in an IOLTA Account.

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Subchapter C. MINOR JUDICIARY INTEREST ON TRUST ACCOUNTS

Preamble: Statement of Purpose

The Minor Judiciary Interest on Trust Accounts Program (the “MJ-IOTA Program”) was established by Order of the Supreme Court of Pennsylvania dated August 3, 2004. The judges and justices of all courts created pursuant to Article V, Sections 6 and 7 of the Pennsylvania Constitution are subject to MJ-IOTA. These include Magisterial District Judges, judges of the Philadelphia Municipal Court, judges of the [Traffic Court of Philadelphia and judges of the Pittsburgh Magistrates] Philadelphia Municipal Court, Traffic Division (assuming the jurisdiction and functions of the former Traffic Court of Philadelphia) and judges of the Pittsburgh Municipal Court (judicial unit assigned matters that were formerly within the jurisdiction of the Pittsburgh Magistrates).

The MJ-IOTA Program generates income where formerly there was none. This income aids the citizens of the Commonwealth of Pennsylvania. [Interest] Income earned on MJ-IOTA [accounts] Accounts may be used only for educational legal clinical programs and internships administered by law schools located in Pennsylvania, delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and for the administration and development of the MJ-IOTA [program] Program.

§ 81.301. Minor Judiciary Interest on Trust Accounts Program.

(a) [All qualified funds received by a judge, magistrate or district justice (hereinafter judicial official) in the administration of his/her duties shall be placed in a Minor Judiciary Interest on Trust Account (MJ-IOTA) Account. This rule does not change existing practices with respect to funds (other than qualified funds) received by a judicial

official in the administration of his/her duties.] All Qualified Funds received by a judge, magistrate or Magisterial District Judge (hereinafter Judicial Official) in the administration of his/her duties shall be placed in a Minor Judiciary Interest on Trust Account (hereinafter MJ-IOTA Account) as defined in paragraph (c) below; such Qualified Funds placed in MJ-IOTA Accounts are referred to hereinafter as MJ-IOTA Funds. This rule does not change existing practices with respect to funds (other than Qualified Funds) received by a Judicial Official in the administration of his/her duties.

(b) [Qualified funds are monies received by a judicial official in a custodial capacity that, in the good faith judgment of the judicial official] Qualified Funds are monies received by a Judicial Official in a Custodial Capacity that, in the Good Faith judgment of the Judicial Official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient [interest] income will not be generated to justify the expense of earning [interest] income to benefit the owner of the funds.

(c) [A MJ-IOTA is an unsegregated interest-bearing account with a depository institution for the deposit of qualified funds maintained by a judicial official.] An MJ-IOTA Account is an unsegregated interest-bearing account with a Depository Institution for the deposit of Qualified Funds maintained by a Judicial Official. An account shall not be considered an MJ-IOTA Account unless the [depository institution] Depository Institution at which the account is maintained shall:

(1) Remit monthly any [interest] income earned on the account to the [IOLTA Board] Interest on Lawyers Trust Account Board of the Supreme Court of Pennsylvania (hereinafter the IOLTA Board), or if that is not possible, remit the [interest] income earned at least quarterly.

(2) Transmit to the IOLTA Board with each remittance a statement showing [at least] not less than the following information: the name of the account[,]; the account number[,]; the service charges [or] and/or fees deducted, if any[,]; the amount of [interest] income remitted from the account[,]; and if available, the average daily collected balance in the account for the period reported.

(3) [Compute the rate of interest paid on MJ-IOTA Accounts at no less than the highest rate of interest generally available from the depository institution to non-MJ-IOTA depositors when MJ-IOTA Accounts meet or exceed the same minimum balance or other account eligibility qualifications as other non-MJ-IOTA depositors. In no event shall the rate of interest payable on MJ-IOTA accounts be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.] Compute the rate of interest or dividend paid on an MJ-IOTA Account at no less than the highest rate of interest or dividend generally available from the Depository Institution to non-MJ-IOTA customers when the MJ-IOTA Account meets the same minimum balance or other account eligibility qualifications.

(4) [**The accounts must be collateralized by the assets of the banks in accordance with Act 72 of 1971.**] Collateralize the account with the assets of the Depository Institution in accordance with current practice and Act 72 of 1971.

(d) The MJ-IOTA Program shall be administered by the IOLTA Board. Disbursement and allocation of MJ-IOTA [**funds**] **Funds** shall be subject to the prior approval of the Supreme Court of Pennsylvania (hereinafter the Court). A copy of the IOLTA Board's proposed annual budget will be provided to the Court, designating the uses to which MJ-IOTA [**Funds**] **funds** are recommended. The IOLTA Board shall submit to the [**Supreme**] Court a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the MJ-IOTA Program.

[**Interest**] **Income** earned on MJ-IOTA Accounts may be used only for the following purposes:

(1) educational legal clinical programs and internships administered by law schools located in Pennsylvania, with emphasis given to providing grants to these programs such that the total funding they receive from the IOLTA Board is relatively stable and reasonably predictable from year to year in accordance with the allocation plan approved by the Court:

(2) delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(3) administration and development of the MJ-IOTA [**program**] **Program** in Pennsylvania.

(e) The IOLTA Board shall hold the beneficial interest in MJ-IOTA Funds. Monies received in the MJ-IOTA [**program**] **Program** are not state or federal funds and are not subject to Article VI of the Act of April 9, 1929 (P.L. 177, No. 175) known as the Administrative Code of 1929, or the Act of June 29, 1976 (P.L. 469, No. 117).

§ 81.302. Definitions.

The following words and phrases when used in these [**regulations**] **Regulations** shall have the meanings given to them in this section unless the context clearly indicates otherwise:

AOPC. The Administrative Office of Pennsylvania Courts.

AOPC Magisterial District Judge Case Reporting System. The computerized docket activity tracking and accounting system developed by the AOPC for use by the Magisterial District Judges throughout the state.

Beneficial Owner. The third party whose funds are in the custody of a [**judicial official**] **Judicial Official**.

[**Board.** The Pennsylvania Interest on Lawyer Trust Account Board.]

Comparability Guidance. Guidance developed and updated from time to time by the IOLTA Board which addresses how Depository Institutions should determine the comparable interest or dividend rate to be applied to MJ-IOTA Accounts. This guidance is made available online at www.paiolta.org and may also be obtained by writing to the IOLTA Board at P.O. Box 62445, Harrisburg, PA 17106-2445.

Custodial Account. [**Any account maintained in a depository institution in which or with respect to which a judicial official holds the funds of a beneficial owner.**] Any account maintained in a Depository Institution in which or with respect to which a Judicial Official holds the funds of a Beneficial Owner.

Custodial Capacity. [**The capacity in which the judicial official holds funds of a beneficial owner received by a judicial official in his or her capacity as a judicial official.**] The capacity in which the Judicial Official holds funds of a Beneficial Owner received by a Judicial Official in his or her capacity as a Judicial Official.

Custodial Funds. Funds, whether cash, check, money order, or other negotiable instrument, received by a [**judicial official**] **Judicial Official** in his or her capacity as a [**judicial official**] **Judicial Official**.

Depository Institution. [**A financial institution in which a member of the minor judiciary holds funds of beneficial owners in a custodial account.**] A financial institution in which a Judicial Official holds funds of Beneficial Owners in a Custodial Account.

Good Faith. Honesty in fact in the conduct or transaction concerned.

IOLTA Board. The Pennsylvania Interest on Lawyers Trust Account Board.

Judicial Official. Each judge and justice of all courts created pursuant to Article V, Sections 6 and 7 of the Pennsylvania Constitution are judicial officials. These include Magisterial District Judges, judges of the Philadelphia Municipal Court, judges of the [**Traffic Court of Philadelphia and judges of the Pittsburgh Magistrates Court**] Philadelphia Municipal Court, Traffic Division and judges of the Pittsburgh Municipal Court.

MJ-IOTA Account. [**An un-segregated interest-bearing account with a depository institution for the deposit of qualified funds by a judicial official, the interest from which is beneficially owned by the Board.**] An un-segregated income-producing account with a Depository Institution for the deposit of Qualified Funds by a Judicial Official, the income from which is beneficially owned by the IOLTA Board.

MJ-IOTA Order. The Order of the Supreme Court of Pennsylvania dated August 3, 2004 which established the Minor Judiciary Interest on Trust Account Program.

Qualified Funds. Funds, whether cash, check, money order, or other negotiable instrument received by a [**judicial official**] **Judicial Official** in his or her capacity as a [**judicial official**] **Judicial Official** which, in the [**good faith**] **Good Faith** judgment of the [**judicial official**] **Judicial Official**, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient [**interest**] **income** will not be generated to justify the expense of earning [**interest to benefit the beneficial owner**] **income to benefit the Beneficial Owner** of the funds.

Regulations. These regulations adopted by the IOLTA Board, and approved by the Supreme Court of Pennsylvania, as they may be amended from time to time.

§ 81.303. Scope.

The MJ-IOTA [**program**] **Program** applies to each [**custodial account**] **Custodial Account** maintained by, or on behalf of, a [**judicial official**] **Judicial Official** in the performance of his or her official duties.

§ 81.304. Custodial Funds.

(a) Custodial [**funds**] **Funds** must be deposited in a [**custodial account**] **Custodial Account**.

(b) [**Qualified funds are custodial funds that, in the good faith judgment of the judicial official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of earning interest to benefit the beneficial owner of the funds. With few exceptions, custodial funds handled by judicial officials will be qualified funds.**] **Qualified Funds are Custodial Funds that, in the Good Faith judgment of the Judicial Official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of earning income to benefit the Beneficial Owner of the funds. With few exceptions, Custodial Funds handled by Judicial Officials will be Qualified Funds.**

(c) [**The judicial official, in the exercise of good faith judgment, should apply an economic benefits test to determine whether particular custodial funds are not qualified funds and hence the beneficial owner of the funds should receive interest on those funds.**] **The Judicial Official, in the exercise of Good Faith judgment, should apply an economic benefits test to determine whether particular Custodial Funds are not Qualified Funds and hence the Beneficial Owner of the funds should receive the income on those funds.**

(1) If the anticipated cost of administering a segregated account for the benefit of the [**beneficial owner**] **Beneficial Owner** of the funds is more than the [**interest**] **income** expected to be generated on the funds, then the funds are [**qualified funds**] **Qualified Funds**.

(2) [**Custodial funds that when considered alone are not large enough to earn interest for the beneficial owner thereof are qualified funds.**] **Custodial Funds that when considered alone are not large enough to earn income for the Beneficial Owner thereof are Qualified Funds.**

(3) Funds which are not expected to be held for a sufficient time to provide [**interest for the beneficial owner are qualified funds**] **income for the Beneficial Owner are Qualified Funds.**

(d) Factors which should be used to determine whether [**custodial funds are qualified funds**] **Custodial Funds are Qualified Funds** include:

(1) the cost of establishing and maintaining separate account(s) benefiting [**beneficial owners**] **Beneficial Owners**;

(2) the account and bank service charges of the [**depository institution**] **Depository Institution** in which the account is maintained;

(3) the minimum deposit requirements of the [**depository institution**] **Depository Institution** in which the account is maintained;

(4) accounting fees incurred in connection with the funds;

(5) tax reporting requirement costs incurred in connection with the funds; and

(6) the length of time the funds are expected to be on deposit and the rate of interest **or dividend** that will be earned on the funds.

(e) Examples of [**qualified funds**] **Qualified Funds** include:

(1) funds collected which represent fines and costs that are awaiting payment to the appropriate governmental entity;

(2) funds collected which represent posting of collateral by individuals who plead not guilty to a charged offense, unless those funds are of such a magnitude that the costs of administering a separate account for those funds, including service charges and other charges, will be less than the [**interest**] **income** anticipated to be earned;

(3) funds collected which represent posting of bail by or on behalf of an individual awaiting a hearing, unless those funds are of such a magnitude that the costs of administering a separate account for those funds, including service charges and other charges, will be less than the [**interest**] **income** anticipated to be earned;

(4) funds collected which represent restitution to victims pending the payment of the funds to the victims; and

(5) funds collected which represent payment of filing fees and other costs pending payment to the appropriate persons or entities.

§ 81.305. Special Provisions Applicable to Custodial Accounts of Magisterial District Judges.

(a) Each [**magisterial district judge**] **Magisterial District Judge** must use the statewide computerized reporting system of the AOPC for reporting all transactions which occur through his or her [**custodial account**] **Custodial Account**. [**As of the date of these regulations, the AOPC Magisterial District Judge case reporting system is incapable of handling more than one custodial account per magisterial district judge, meaning that each magisterial district judge may maintain only one custodial account.**] **As of the date of these Regulations, the AOPC Magisterial District Judge Case Reporting System is incapable of handling more than one Custodial Account per Magisterial District Judge, meaning that each Magisterial District Judge may maintain only one Custodial Account.**

(b) [**Custodial funds received by a magisterial district judge will generally be qualified funds.**] **Custodial Funds received by a Magisterial District Judge will generally be Qualified Funds.** Magisterial District Judges, however, may determine that particular [**custodial funds received are not, in fact, qualified funds**] **Custodial Funds received are not, in fact, Qualified Funds**, applying the criteria set forth in § 81.304.

(c) Each [**magisterial district judge**] **Magisterial District Judge** is permitted to exercise his or her

judgment as to whether [custodial funds received by that magisterial district judge are qualified funds] Custodial Funds received by that Magisterial District Judge are Qualified Funds. [If, in the good faith judgment of the magisterial district judge, custodial funds are not qualified funds, the magisterial district judge may request a refund of interest with respect to those custodial funds.] If, in the Good Faith judgment of the Magisterial District Judge, Custodial Funds are not Qualified Funds, the Magisterial District Judge may request a refund of income with respect to those Custodial Funds. See § 81.308—Refunds.

(d) [If, in the future, the AOPC magisterial district judge case reporting system permits handling of multiple custodial accounts for each magisterial district judge, the provisions of this section shall no longer apply, although magisterial district judges shall remain subject to the remaining provisions of these regulations.] If, in the future, the AOPC Magisterial District Judge Case Reporting System permits handling of multiple Custodial Accounts for each Magisterial District Judge, the provisions of this section shall no longer apply, although Magisterial District Judges shall remain subject to the remaining provisions of these Regulations.

§ 81.306. Requirements Applicable to MJ-IOTA Accounts.

(a) [Unless an exemption has been granted to the judicial official, each judicial official shall establish a MJ-IOTA account at the depository institution of his or her choice.] Unless an exemption has been granted to the Judicial Official, each Judicial Official shall establish an MJ-IOTA Account at the Depository Institution of his or her choice, provided that the Depository Institution complies with the MJ-IOTA Regulations. If local county policies and procedures concerning accounts established by the [judicial official] Judicial Official exist, nothing herein shall be construed as relieving the [judicial official] Judicial Official of complying with such policies and procedures, except to the extent inconsistent herewith.

(b) [In order to qualify as a MJ-IOTA Account, the depository institution must:] In order to qualify an account as an MJ-IOTA Account, the Depository Institution must satisfy the requirements set forth in Section 81.301(c) above.

[(1) Remit monthly any interest earned on the account to the Board, or if that is not possible, remit the interest earned at least quarterly; and

(2) Transmit to the Board with each remittance a statement showing not less than the following information: the name of the account, the account number, the service charges and/or fees deducted, if any, from the account, the amount of interest remitted from the account, and if available, the average daily collected balance in the account for the period reported.]

(c) The following additional requirements apply to MJ-IOTA [accounts] Accounts:

[(1) The rate of interest paid on MJ-IOTA Accounts shall be not less than the highest rate of interest generally available from the depository

institution to depositors generally for accounts with the same minimum balance and other account eligibility requirements.

(2) Under no circumstances may the rate of interest payable on a MJ-IOTA account be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.

(3) The accounts must continue to be collateralized by the assets of the depository institution in accordance with current practice and Act 72 of 1971.]

(1) A Depository Institution shall submit to the IOLTA Board for review and approval a Compliance Certification Form, which identifies the rate of interest or dividend to be provided for MJ-IOTA Accounts and certifies the Depository Institution's compliance with the MJ-IOTA Regulations and the IOLTA Board's Comparability Guidance. Prior to changing a rate that was previously approved by the IOLTA Board, or when the rates for comparable products exceed the rate listed in the Depository Institution's most recently approved Compliance Certification Form, the Depository Institution shall submit a new Compliance Certification Form to the IOLTA Board for review and approval.

(2) Depository Institutions shall grant requests by the IOLTA Board to recover income that was not remitted to the IOLTA Board, in accordance with the Depository Institution's most recently approved Compliance Certification Form, during the twelve months preceding the IOLTA Board's request.

(d) Depository [institutions] Institutions may impose reasonable service charges for the administration of MJ-IOTA [accounts] Accounts.

(1) A [depository institution] Depository Institution may deduct service charges such as maintenance fees and transaction charges against the amount of [interest] income to be paid on the MJ-IOTA [account] Account to which service charges apply.

(2) All costs associated with check printing, overdraft charges, charges for a temporary extension of credit, stopped payments, certified checks, wire transfers and similar bank charges shall not be assessed against [funds in or interest earned on a MJ-IOTA account] Qualified Funds in or income earned on an MJ-IOTA Account.

[(3) All costs for services such as overdrafts on deposited items, stopped payments, certified checks, and wire transfers shall not be assessed against funds in or interest earned on a MJ-IOTA account.]

§ 81.307. Exemptions from MJ-IOTA Participation.

(a) The IOLTA Board may grant exemptions from participation in the MJ-IOTA Program. Exemptions are not automatic. The IOLTA Board may declare a [judicial official] Judicial Official exempt from the requirements of maintaining [a MJ-IOTA account] an MJ-IOTA Account. Alternatively, a [judicial official] Judicial Official may submit a written request for exemption. All requests by a [judicial official must be made on the judicial official's] Judicial Official

must be made on the **Judicial Official's** official letterhead, and all requests must set forth in reasonable detail the basis for the requested exemption.

(b) [Exemptions may be granted only with respect to the maintenance of a MJ-IOTA account for qualified funds. The Board is not empowered to handle other types of exemptions. Judicial officials exempt from maintenance of a MJ-IOTA account are reminded that the judicial official remains subject to other requirements pertaining to custodial funds.] Exemptions may be granted only with respect to the maintenance of an MJ-IOTA Account for Qualified Funds. The IOLTA Board is not empowered to handle other types of exemptions. Judicial Officials exempt from maintenance of an MJ-IOTA Account are reminded that the Judicial Official remains subject to other requirements pertaining to Custodial Funds.

(c) Exemptions will be routinely granted in the following situations:

(1) Low balance account: Any [custodial account] Custodial Account which historically, generally based upon 12 consecutive months of activity, has an average daily balance of three thousand five hundred (\$3,500) Dollars or less will be exempt from being [a MJ-IOTA account] an MJ-IOTA Account. The IOLTA Board may exempt from the MJ-IOTA Program, without application, a low balance account. A [judicial official] Judicial Official requesting an exemption based on a low balance account must, as a part of the written request for exemption, include an account analysis or written statement that demonstrates the amount of the average daily balance.

(2) Account service charges routinely exceed [interest] income: Some [custodial accounts] Custodial Accounts may have an average daily balance of more than \$3,500, but account service charges routinely exceed [interest] the income earned on the account. A [judicial official] Judicial Official requesting an exemption under this subsection, as part of the written request for exemption, must include an account analysis or written statement that clearly shows the [interest earned, or the interest] income earned, or the income that would have been earned, on the account each month for the past 12 months, plus the account service charges imposed on the account for each of the last 12 months. Only account-related service charges will be considered for the purpose of whether an exemption will be granted.

(3) Extreme impracticality: Under limited circumstances it may be unduly burdensome for a [judicial official to maintain a MJ-IOTA account] Judicial Official to maintain an MJ-IOTA Account. When claiming undue hardship, the [judicial official] Judicial Official should provide appropriate detail demonstrating undue hardship. An example includes the lack of a [depository institution that offers MJ-IOTA accounts in the judicial official's] Depository Institution that offers MJ-IOTA Accounts in the Judicial Official's geographical location.

(4) Other compelling and necessitous reasons: A [judicial official] Judicial Official who demonstrates a compelling and necessitous reason for not complying with

the MJ-IOTA Program may request an exemption. A philosophical objection to the MJ-IOTA Program does not constitute a compelling and necessitous reason for an exemption.

(d) If the IOLTA Board denies a [judicial official's] Judicial Official's request for an exemption from maintenance of [a MJ-IOTA account, the judicial official] an MJ-IOTA Account, the Judicial Official may, within 30 days of written notice of denial from the IOLTA Board, request in writing a reconsideration of the IOLTA Board's decision. All requests for reconsideration shall set forth in detail additional facts, if any, not brought before the IOLTA Board in the request for exemption, as well as the reasons, if any, why an exemption should be granted.

(e) [If the Board has determined that a judicial official's custodial account is exempt from MJ-IOTA status, the judicial official may, within 30 days of written notice from the Board that the judicial official is exempt, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail facts, if any, why the judicial official should maintain a MJ-IOTA account, and the manner, if any, in which the Board and the purposes of the MJ-IOTA program will be furthered by the judicial official's maintenance of a MJ-IOTA account.] If the IOLTA Board has determined that a Judicial Official's Custodial Account is exempt from the MJ-IOTA Program, the Judicial Official may, within 30 days of written notice from the IOLTA Board that the Judicial Official is exempt, request in writing a reconsideration of the IOLTA Board's decision. All requests for reconsideration shall set forth in detail facts, if any, why the Judicial Official should maintain an MJ-IOTA Account, and the manner, if any, in which the IOLTA Board and the purposes of the MJ-IOTA Program will be furthered by the Judicial Official's maintenance of an MJ-IOTA Account.

(f) Notice shall be deemed to have been given to a [judicial official] Judicial Official under the provisions of this Section upon the deposit by the IOLTA Board, postage prepaid, with the United States Postal Service of its written determination regarding the exemption, if any, of the [judicial official] Judicial Official from the MJ-IOTA Program.

(g) The IOLTA Board may delegate to its staff or to a committee of the IOLTA Board the authority to determine exemptions from the MJ-IOTA Program or to reconsider exemption denials or determinations.

§ 81.308. Refunds.

(a) [Upon application of a judicial official, the Board may return interest paid to it. For example, if a judicial official mistakenly places custodial funds which are not qualified funds in an MJ-IOTA account, interest earned on those funds may be refunded.] The IOLTA Board may return income paid to the IOLTA Board under certain circumstances. For example, if a Judicial Official mistakenly places Custodial Funds which are not Qualified Funds in an MJ-IOTA Account, then the Judicial Official may apply to the IOLTA Board for a refund of the income paid to the IOLTA Board.

(b) [At the time of the issuance of these regulations, all custodial funds handled by Magisterial District Judges are anticipated to be qualified funds. Magisterial District Judges occasionally may determine that certain custodial funds maintained in their custodial account do not meet this presumption, and are not qualified funds. Upon application of the Magisterial District Judge, the Board may return interest paid to it applicable to the funds which were not qualified funds.] At the time of the issuance of these Regulations, all Custodial Funds handled by Magisterial District Judges are anticipated to be Qualified Funds. Magisterial District Judges occasionally may determine that certain Custodial Funds maintained in their Custodial Account do not meet this presumption, and are not Qualified Funds. Upon application of the Magisterial District Judge, the IOLTA Board may return income paid to it applicable to the funds which were not Qualified Funds.

(c) The following guidelines apply to requests for a refund of [interest] income:

(1) [All requests by a judicial official must be made on the judicial official's] Requests by a Judicial Official must be made on the Judicial Official's official letterhead, and all requests must set forth in reasonable detail the basis for the requested refund[;].

(2) [The request] Requests must be accompanied by verification of the [interest] income paid with respect to the funds mistakenly placed in the MJ-IOTA [account] Account. Verification must be made by the [depository institution] Depository Institution in which the MJ-IOTA [account] Account is maintained. As needed for auditing purposes, the IOLTA Board may request additional documentation[;].

(3) [The request must be made within six months after the beneficial owner's funds have been disbursed from the MJ-IOTA account;] The IOLTA Board will only consider requests where the income to be refunded was received by the IOLTA Board during the twelve-month period prior to the IOLTA Board receiving the written request for a refund.

(4) [Refunds will be remitted to the beneficial owner and the Board will issue an IRS (Internal Revenue Service) form 1099 to the beneficial owner;] Refunds will be remitted through the Depository Institution that transmitted the income to the IOLTA Board unless an alternative method is requested and agreed to by the IOLTA Board.

(5) If the [depository institution] Depository Institution has imposed a service charge with respect to the MJ-IOTA [account] Account, only the net amount of [interest] income paid to the IOLTA Board (i.e., the [interest] income reduced by applicable service charges) will be refunded[; and].

(6) The IOLTA Board may impose and deduct a processing charge from the refund.

[Pa.B. Doc. No. 17-1367. Filed for public inspection August 18, 2017, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 5]

Proposed Amendments to Pa.R.A.P. 511

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 511 to remove references to practices of 15 years ago, update case law citations, make stylistic changes, and add guidance regarding when a cross-petition for allowance of appeal may be appropriate.

The Committee invites all interested persons to submit comments, suggestions, or objections.

Comments should be provided to:

Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, Pennsylvania 17106-2635
FAX: (717) 231-9551
appellaterules@pacourts.us

All communications in reference to the proposal should be received by September 29, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any emailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

An Explanatory Comment precedes the proposed amendments and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
Procedural Rules Committee*

HONORABLE PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

MULTIPLE APPEALS

Rule 511. [Cross Appeals] Cross-Appeals.

The timely filing of an appeal shall extend the time for any other party to [cross appeal as set forth in Rules 903(b) (cross appeals), 1113(b) (cross petitions for allowance of appeal) and 1512(a)(2) (cross petitions for review)] cross-appeal as set forth in Pa.R.A.P. 903(b), 1113(b), and 1512(a)(2). The discontinuance of an appeal by a party shall not affect the right of appeal or cross-appeal of any other party regardless of whether the parties are adverse.

Official Note: [The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross

appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal.

The 2002 amendment eliminates the requirement that a party be adverse in order to file a cross appeal and supersedes *In Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279, (Pa. Cmwlth. 1997), to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal. See Rule 903(b).]

See also [Rules] Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in [cross appeals and Rule] cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

[An appellee should not be required to file a cross appeal because the Court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. See *Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695 (Pa. Super. 2000) and *Hashagen v. Worker's Compensation Appeal Board*, 758 A.2d 276 (Pa. Cmwlth. 2000). To the extent that *Saint Thomas Township Board of Supervisors v. Wycko*, 758 A.2d 755 (Pa. Cmwlth. 2000) is in conflict, it is disapproved.]

An appellate court can sustain a trial court's judgment if the decision was correct, even if the basis for the decision was not; accordingly, an appellee can argue alternative grounds for affirmation and does not need to file a cross-appeal to preserve an issue it wishes to raise. *Lebanon Valley Farmers Bank v. Commonwealth*, 83 A.3d 107, 111-112 (Pa. 2013). That is because "the focus of review is on the judgment or order before the appellate court, rather than any particular reasoning or rationale employed by the lower tribunal." *Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1200 (Pa. 2009). A party receiving all of the relief it sought thus does not need to file a cross-appeal. *Lebanon Valley*, 83 A.3d at 112-113; *Hosp. & Healthsystem Ass'n of Pa. v. Dep't of Pub. Welfare*, 888 A.2d 601, 607 n.11 (Pa. 2005); *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 589-90 (Pa. Super. 2003). A party's analysis may change in light of the ruling of an intermediate appellate court. See, e.g., *A. Scott Enter., Inc. v. City of Allentown*, 142 A.3d 779, 786 (Pa. 2016). If an intermediate appellate court decision awards different relief than the trial court or other government unit decision, a party may wish to file a cross-petition for allowance of appeal under Pa.R.A.P. 1112. See *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).

EXPLANATORY COMMENT

The Committee proposes four changes to Pa.R.A.P. 511, which addresses cross-appeals. These are to delete references to practices of 15 years ago, update case law citations, make stylistic changes, and add guidance re-

garding when a cross-petition for allowance of appeal may be appropriate.

First, before the 2002 amendment, there were cases holding that some parties could not file cross-appeals. For example, if a co-defendant or intervenor had been aligned with the appellant in the underlying litigation, then that party could not file a cross-appeal even if it was aggrieved by rulings that did not affect the party that had already filed a notice of appeal. When Pa.R.A.P. 903(b) was amended to make a cross-appeal available to any party, the Note to Pa.R.A.P. 511 was also amended. The Committee proposes removing the discussion of that amendment.

Second, as part of the 2002 amendment, the Committee sought to clarify that a party did not need to file a cross-appeal if the ruling in question adversely decided an issue, but did not deprive the party of any relief. Since 2002, the case law has clarified that principle, and the Committee proposes substituting current case law for the law that is presently in the Note.

Third, the Committee proposes to make certain non-substantive conforming amendments to the rule.

Finally, neither the Note to Pa.R.A.P. 511 nor the Note to Pa.R.A.P. 1113 regarding cross-petitions for allowance of appeal offers guidance regarding additional considerations that may influence the decision to file a cross-petition for allowance of appeal. Unlike intermediate appellate courts, the Supreme Court exercises its discretionary review on a question-by-question basis. Thus, the prospect of Supreme Court reversal of an intermediate appellate court's decision on a given question may leave intact another ruling that adversely affects the appellee. For example, a party may have prevailed in the trial court on one theory and prevailed in the intermediate appellate court on another. The Supreme Court's ruling on one theory may leave intact the impact of the other theory. Another scenario would be where an intermediate appellate court did not have reached issues on which the party prevailed in the trial court. Either situation might lead a party to file a cross-petition for allowance of appeal, even if the party was not aggrieved by the trial court ruling. A proposed amendment adds language to alert practitioners to consider various ways in which it might be aggrieved by the intermediate court's ruling and, thus, have cause to file a cross-petition for allowance of appeal.

[Pa.B. Doc. No. 17-1368. Filed for public inspection August 18, 2017, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 9]

Proposed Amendments to Pa.R.A.P. 904 and 907

Protecting the privacy of juveniles and children is of great importance to the Courts. To date, that has been done through the use of initials rather than full names. When attempting to access opinions and dockets, however, initials alone can be unwieldy. In an effort to provide an additional reference point, the Committee is proposing to amend Pa.R.A.P. 904 and 907 to require the captions to include initials, county, and year.

The Committee invites all interested persons to submit comments, suggestions, or objections.

Comments should be provided to:

Appellate Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Ave., Suite 6200
 P.O. Box 62635
 Harrisburg, Pennsylvania 17106-2635
 FAX: (717) 231-9551
 appellaterules@pacourts.us

All communications in reference to the proposal should be received by September 29, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any emailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

An Explanatory Comment precedes the proposed amendments and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
 Procedural Rules Committee*

HONORABLE PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 904. Content of the Notice of Appeal.

* * * * *

(b) *Caption.*—[**The**] **Except as provided in paragraph (g), the parties shall be stated in the caption as they stood upon the record of the trial court at the time the appeal was taken.**

* * * * *

(f) *Content in children’s fast track appeals.*—In a children’s fast track appeal the notice of appeal shall include a statement advising the appellate court that the appeal is a children’s fast track appeal.

(g) *Caption in Juvenile Act and Adoption Act appeals.*—For an appeal of an order arising from a proceeding under the Juvenile Act or the Adoption Act, the caption shall be stated using the initials of the child’s full name, followed by the name of the county in which the order being appealed was entered and the year in which the order was entered.

Official Note: The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. § 9101 *et seq.*

* * * * *

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. *See also* Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

Paragraph (g) introduced a new naming convention for appeals from decisions under the Juvenile Act, 42 Pa.C.S. § 6301, *et seq.*, and the Adoption Act, 23 Pa.C.S. § 2101, *et seq.* For such appeals, references to juveniles or children should be by initials, county, and year, such as *In the Interest of A.B.C.—Jefferson 2017*. The revised form of caption preserves the child’s anonymity but avoids the confusion that has arisen using initials alone.

Rule 907. Docketing of Appeal.

(a) *Docketing of appeal.*—Upon the receipt of the papers specified in [**Rule 905(b) (transmission to appellate court)**] **Pa.R.A.P. 905(b)**, the prothonotary of the appellate court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the [**lower**] **trial** court, to the appellant, and to the persons named in the proof of service accompanying the notice of appeal. An appeal shall be docketed under the caption given to the matter in the [**lower**] **trial** court, with the appellant identified as such, [**but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the appellate court**] **unless the appeal arises under the Juvenile Act or the Adoption Act, in which case the juvenile or child should be identified by the initials of the child’s full name, followed by the name of the county in which the order being appealed has been entered and the year in which the order was entered. If the appellant is not identified in the caption of the trial court, the appellant’s name shall be added to the caption in the appellate court.**

(b) *Entry of appearance.*—Upon the docketing of the appeal, the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary of the appellate court shall, upon *praecepe* of any such counsel for other parties, filed within 30 days after filing of the notice of appeal, strike off or correct the record of appearances. Thereafter a counsel’s appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of [**Subdivision**] **paragraph** (a) of this rule.

[**With regard to subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*).**]

With respect to appearances by new counsel following the initial docketing appearances pursuant to [**Subdivision**] **paragraph** (b) of this rule, please note the requirements of [**Rule**] **Pa.R.A.P. 120.**

EXPLANATORY COMMENT

Protecting the privacy of juveniles and children is of great importance to the courts. To date, that has been done through the use of initials rather than full names. When attempting to access opinions and dockets, however, initials can be unwieldy. As one example, on March 21, 2014, the Superior Court decided *In the Interest of T.J.*, in an unpublished opinion; a later Superior Court opinion was issued July 24, 2014. That case came out of Berks County. But there is also a Superior Court “*In the Interest of T.J.*” from 2012 (from Philadelphia County) and 2010 (Allegheny County). Accordingly, if a person is looking for “*In the Interest of T.J.*,” the title of the opinion is not enough to avoid confusion. Options such as using actual first names with last initials only or assigning random first names in alphabetical order (as is done with hurricanes) appeared to create new issues. For example, in a large county, “*In the Interest of John D.*” might still generate multiple same-name appeals, and in a small one, an unusual first name might eliminate the anonymity needed. If names were generated randomly on a county-by-county basis, there would likewise be opportunities for duplication and confusion, as well as additional administrative challenges.

In an effort to use the existing format, but avoid confusion, the Appellate Court Procedural Rules Committee is proposing the use of initials, county, and year in combination. Accordingly, the Committee is proposing to amend Pa.R.A.P. 904 and 907 to ensure that notices of appeal—and from the notices of appeal, the appellate dockets—use that format.

[Pa.B. Doc. No. 17-1369. Filed for public inspection August 18, 2017, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rule 1910.16-1 of the Rules of Civil Procedure; No. 669 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 3rd day of August, 2017, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 46 Pa.B. 6106 (October 1, 2016):

It is ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.16-1 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-1. Amount of Support. Support Guidelines.(a) *Applicability of the Support Guidelines.*

(1) Except as provided in subdivision [(2)] (3), the support guidelines determine the amount of support [**which**] that a spouse or parent should pay based on the parties' combined monthly net [**incomes**] **income**, as defined in Pa.R.C.P. No. 1910.16-2, and the number of persons being supported.

(2) If a person caring for or having custody of a minor child, who does not have a duty of support to the minor child, initiates a child support action as provided in Pa.R.C.P. No. 1910.3:

(i) **the complaint shall identify the parent(s) as defendant(s);**

(ii) **in determining the basic child support amount, the monthly net income for the individual initiating the action shall not be considered in the support calculation by the trier of fact;**

(iii) **the parents' monthly net incomes shall be combined to determine the basic child support amount, which shall be apportioned based on the parents' respective monthly net incomes consistent with Pa.R.C.P. No. 1910.16-4. The parents shall pay the obligee their proportionate share of the basic child support amount as a separate obligor; and**

(iv) **as with other support actions, the trier of fact may make adjustments or deviations consistent with the support guidelines based on the evidence presented by the parties.**

Example 1. The parents have one child, who is in the custody of the maternal grandmother. Maternal grandmother initiates a support action against the parents. Mother's monthly net income is \$3,000 and Father's monthly net income is \$2,000 for a combined monthly net income of \$5,000. For purposes of the child support calculation, maternal grandmother's income is irrelevant and not part of the calculation. The basic child support obligation for one child at a combined monthly net income of \$5,000 is \$990 per month. Mother's percentage share of the combined monthly net income is 60% (\$3,000/\$5,000) and Father's percentage share of the combined monthly net income is 40% (\$2,000/\$5,000). Mother's preliminary monthly share of the child support obligation is \$594 (\$990 × 60%) and Father's preliminary monthly share of the child support obligation is \$396 (\$990 × 40%). Maternal grandmother is the obligee with Mother and Father as separate obligors owing \$594 and \$396 respectively to the maternal grandmother.

[(2)] (3) In actions in which the plaintiff is a public body or private agency pursuant to Pa.R.C.P. No. 1910.3, the amount of the order shall be calculated under the guidelines based upon each obligor's monthly net income, as defined in Pa.R.C.P. No. 1910.16-2, with the public or

private entity's income as zero. In such cases, each parent shall be treated as a separate obligor and [a] the parent's obligation will be based upon his or her own monthly net income without regard to the income of the other parent.

(i) The amount of basic child support owed to other children not in placement shall be deducted from each parent's monthly net income before calculating support for the child or children in placement, including the amount of direct support the guidelines assume will be provided by the custodial parent.

Example [1.] 2. Mother and Father have three children and do not live in the same household. Mother has primary custody of two children and monthly net income of \$2,000 per month. Father's monthly net income is \$3,000. The parties' third child is in foster care placement. Pursuant to the schedule in Pa.R.C.P. No. 1910.16-3, the basic child support amount for the two children with Mother is \$1,415. As Father's income is 60% of the parties' combined monthly net income, his basic support obligation to Mother is \$849 per month. The guidelines assume that Mother will provide \$566 per month in direct expenditures to the two children in her home. The agency/obligee brings an action against each parent for the support of the child in placement. Father/obligor's income will be \$2,151 for purposes of this calculation (\$3,000 less \$849 in support for the children with Mother). As the agency/obligee's income is zero, Father's support for the child in placement will be 100% of the schedule amount of basic support for one child at the \$2,151 income level, or \$509 per month. Mother/obligor's income will be \$1,434 for purposes of this calculation (\$2,000 less \$566 in direct support to the children in her custody). Her support obligation will be 100% of the schedule amount for one child at that income level, or \$348 per month.

Example [2.] 3. Mother and Father have two children in placement. Father owes child support of \$500 per month for two children of a former marriage. At the same income levels as in Example [1] 2, Father's income for determining his obligation to the children in placement would be \$2,500 (\$3,000 less \$500 support for two children of prior marriage). His obligation to the agency would be \$849 per month (100% of the schedule amount for two children at the \$2,500 per month income level). Mother's income would not be diminished as she owes no other child support. She would owe \$686 for the children in placement (100% of the schedule amount for two children at the \$2,000 income level).

(ii) If the parents reside in the same household, their respective obligations to the children who remain in the household and are not in placement shall be calculated according to the guidelines, with the parent having the higher income as the obligor, and the calculated support amount shall be deducted from the parents' monthly net incomes for purposes of calculating support for the child(ren) in placement.

Example [3.] 4. Mother and Father have four children, two of whom are in placement. Mother's monthly net income is \$4,000 and Father's is \$3,000. The basic support amount for the two children in the home is \$1,660, according to the schedule in Pa.R.C.P. No. 1910.16-3. As Mother's income is 57% of the parties' combined monthly net incomes, her share would be \$946, and Father's 43% share would be \$714. Mother's income

for purposes of calculating support for the two children in placement would be \$3,054 (\$4,000 less \$946). She would pay 100% of the basic child support at that income level, or \$1,032, for the children in placement. Father's income would be \$2,286 (\$3,000 less \$714) and his obligation to the children in placement would be \$784.

(iii) In the event that the combined amount the parents are required to pay exceeds the cost of placement, the trier of fact shall deviate **the support amount downward** to reduce each parent's obligation in proportion to his or her share of the combined obligation.

[(3)] (4) The support of a spouse or child is a priority obligation so that a party is expected to meet this obligation by adjusting his or her other expenditures.

* * * * *

Explanatory Comment—2013

The schedule of basic child support has been updated to reflect newer economic data. The schedule was prepared by Jane Venohr, Ph.D., the economist who assisted in the last guideline review using the same methodology. It includes an increase in the Self-Support Reserve to \$931 per month, the 2012 federal poverty level for one person.

Explanatory Comment—2017

Pursuant to Pa.R.C.P. No. 1910.3(a), a person having custody of a child or caring for a child may initiate a support action against the child's parent(s). Previously, this rule only addressed when a public body or private agency had custody of a child but was silent with regard to an individual third party, e.g., grandparent, seeking support. The rule has been amended by adding a new subdivision (a)(2) and renumbering the previous (a)(2) to (a)(3). In addition, an example illustrating the new (a)(2) calculation has been included.

Subdivision (a)(2) excludes the income of the third party/obligee, as that person does not have a duty of support to the child; instead, the rule uses the combined monthly net income of the parents to determine the basic child support amount, which is then apportioned between the parents consistent with their respective percentage of the combined monthly net income in the same manner as a parent vs. parent support action. However, under this rule, each parent would be a separate obligor, would pay the obligee their proportionate share under a separate support order, and would be subject to separate enforcement proceedings. Under (a)(2), the exclusion of the third party's income is consistent with Pa.R.C.P. No. 1910.16-2(b)(2)(B) as that rule relates to an action for support by a third party against a surviving parent in which the child receives a Social Security derivative benefit due to the death of the other parent.

In accordance with Pa.R.C.P. No. 1910.16-6(c), payment of the first \$250 of unreimbursed medical expenses per year per child is applicable to third party/obligees in support actions governed by (a)(2). The first \$250 of unreimbursed medical expenses is built into the Basic Child Support Schedule.

[Pa.B. Doc. No. 17-1370. Filed for public inspection August 18, 2017, 9:00 a.m.]

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1—14.5 and Orphans' Court Forms G-01 through G-04, Proposed Adoption of New Pa. O.C. Rules 14.1—14.14 and Orphans' Court Forms G-01 through G-06, and Proposed Amendment of the Appendix of Forms

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rule 1.5, the rescission of Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1—14.5, together with related forms, G-01 through G-04, to be replaced with the adoption of new Pa. O.C. Rules 14.1—14.14 and Orphans' Court Forms G-01 through G-06, and the amendment of the Appendix of Forms, 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.

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

Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9551
orphanscourtproceduralrules@pacourts.us

All communications in reference to the proposal should be received by September 21, 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 Orphans' Court
Procedural Rules Committee*

JOHN F. MECK, Esq.,
Chair

REPUBLICATION REPORT

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1—14.5 and Orphans' Court Forms G-01 through G-04, Proposed Adoption of New Pa. O.C. Rules 14.1—14.14 and Orphans' Court Forms G-01 through G-06, and Proposed Amendment of the Appendix of Forms

In 2014, the Elder Law Task Force delivered a comprehensive 284-page report detailing 130 specific recommendations to help lay the foundation for improvements in tackling elder law issues in the courts and by other government entities. The report recommended a number of amendments to the Pennsylvania Orphans' Court Rules. The report also suggested modification of current statewide guardianship forms and the addition of several new forms to assist in monitoring guardianships.

On December 27, 2016, the Orphans' Court Procedural Rules Committee published for comment a proposal that would rescind and replace Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1—14.5, together with related forms. *See* 46 Pa.B. 7934 (December 27, 2016). The intention of that proposal was to respond

to Elder Law Task Force recommendations and to provide more comprehensive statewide rules establishing uniformity and consistency for guardianship proceedings.

The Committee received seven comments raising an aggregate of 80 discrete points related to the Rules. All of the comments related to the Rules were reviewed and discussed by the Committee in the course of several meetings. These deliberations resulted in several revisions to the Rules, some of which were comprehensive. Accordingly, the Committee decided that the proposal should be re-published for additional comment on those revisions. What follows is further commentary to specific proposed rules and discussion of some of the more significant revisions.

Rule 1.5 Local Rules

Through amendment of Rule 1.5, the Committee intends to recommend that the Court vacate all local rules pertaining to guardianships on a date certain unless the local rules have been reviewed for inconsistency pursuant Pa.R.J.A. No. 103.

Similar to the more global amendments of the Pennsylvania Orphans' Court Rules, effective September 1, 2016, the Committee will recommend an effective date on which all local guardianship rules will be vacated, providing however, sufficient time for the judicial districts to review their local rules and submit to the Committee for review any new rules or current local rules that they wish to retain. Submission of local rules will be subject to a deadline to allow the Committee time to review the proposed local rules for inconsistency.

This rule was not substantively revised for republication.

Rule 14.1 Guardianship Petition Practice and Pleading

A number of comments inquired as to the extent that the requirements in Chapter III of the Pennsylvania Orphans' Court Rules concerning petition practice and pleading requirements would apply to guardianship proceedings. Commenters suggested that the notice and timing requirements would cause delays and invite litigation. Further, some aspects of Chapter III appear impractical in a guardianship proceeding.

Rule 14.1 is designed to place different requirements on petitions for the adjudication of incapacity and appointment of a guardian on one hand and all other petitions on the other hand. Paragraph (a) incorporates by reference and applies specific aspects of Chapter III to petitions for adjudication and appointment. Paragraph (b) provides for the filing of responsive pleadings in these proceedings, but does so on a limited basis and subject to a shorter time frame than Chapter III. While the Committee does not believe that such pleadings are going to be used frequently, a procedural mechanism should exist for contested guardianship proceedings.

It should be noted that responsive pleadings under paragraph (b) are permissive and not required—there are no “default judgments” with respect to the adjudication of incapacity. Further, the paragraph is not intended to preclude the judge from hearing objections first raised at the adjudicatory hearing. Finally, the judge is to decide the objections at the adjudicatory hearing rather than delaying that hearing with another to determine objections.

For all other petitions, paragraph (c) operates to apply the Chapter III requirements to those pleading, subject to the modification of “interested party.” The Committee recognizes that Chapter III imposes more formal require-

ments on what are often informal proceedings. However, the provisions of Chapter III are designed to afford due process to all involved and the Committee believes that petition practice in guardianship matters require no less protection. As observed in the Explanatory Comment, the requirements are not intended to preclude a petitioner from seeking relief on an emergency or expedited basis when circumstance warrant departure from strict adherence to the Chapter III requirements. However, it will be a judge, and not the Rules, that determine when a departure is warranted.

Paragraph (d) is intended to provide a procedure for a person to seek permission to intervene in a proceeding. This mechanism was crafted as recognition that all those entitled to service pursuant to Rule 14.2(f) may not include all potentially aggrieved parties.

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person

The required content of a petition set forth in the Rule is intended to include those requisites set forth in 20 Pa.C.S. § 5511(c) as well as information to assist the court in determining capacity, the need for a guardian, the appointment of a guardian for the estate and/or the person, and the replacement of a guardian, as the case may be. An additional requirement is the identification of any person or persons who are to receive notice of the filing of reports. The Committee favored a naming procedure rather than a rule stating universally and categorically the classes of persons entitled to view reports.

Paragraph (a)(3) has been revised to require the petitioner to indicate whether intestate heirs are *sui juris*. The Committee received a comment about why the petition must be served on all persons entitled to an intestate share of the alleged incapacitated person's estate pursuant to paragraph (f)(2)(i), rather than only those residing in Pennsylvania, as stated in 20 Pa.C.S. § 5511(a). The Committee recognizes, particularly in counties bordering other states, that family members residing in other states may only be separated by a relatively short distance. Further, the Committee takes notice that people exhibit greater mobility now than in the past. Therefore, the Committee favored providing notice to those relatives regardless of residency within Pennsylvania.

Paragraph (b)(1) has been revised to require the petitioner to identify those individuals who will have direct responsibility for the alleged incapacitated person when the proposed guardian is an entity. This paragraph would also require the principal of the entity to be identified. The Committee acknowledges that designating those persons having direct responsibility may be challenging at this stage in a guardianship proceeding. However, the Committee believes it is important to do so for the purposes of the criminal record check requirement in paragraph (c)(2). For those entities using a team approach or rotating assignments, identification of all likely individuals would be necessary. The Committee also believes that the person having ultimate responsibility for the entity should be identified for purposes of the criminal record check.

Paragraph (b)(4) requires the petition to include whether the proposed guardian has completed any guardianship training. The Committee received several comments regarding this paragraph and whether it was intended to create an expectation that training is a pre-requisite to appointment as a guardian. This para-

graph was intended to require the inclusion of training information; it was not intended to create a training requirement.

Paragraph (b)(5) has been revised to include the number of active matters for the guardian. This quantification is intended to provide the court with information about the current caseload of the proposed guardian.

Paragraph (c)(2) has been revised, together with the addition of the Explanatory Comment, to incorporate a suggestion provided by a comment. With the PATCH System, a requestor can apply for a criminal background check with the Pennsylvania State Police. It is reported that 85% of the time that a "no record" certificate is returned immediately to the requestor. The fee for a request is \$8.00. As explained in the Explanatory Report, the response need not be notarized, thereby avoiding an additional \$5.00 fee. The Committee recognizes there is a cost for obtaining this information, but the value of this information to screen potential guardians and persons having direct responsibility for the incapacitated person justifies the expense.

Rule 14.3 Written Deposition

The Committee previously published for comment a proposed rule and form regarding written depositions to be used for the admission of expert testimony in lieu of live testimony. *See* 46 Pa.B. 2306 (May 7, 2016). That proposal represented a refinement of an earlier published version of the form. *See* 45 Pa.B. 1070 (March 7, 2015). The version submitted to the Court is set forth in the proposed rules to provide context for the remaining rules and forms. The Committee is not soliciting comment on this Rule.

Rule 14.4 Counsel

Based upon a comment, the Committee added new paragraph (a) to the Rule to set forth the statutory requirement that the petitioner inform the court whether the alleged incapacitated person has counsel. *See* 20 Pa.C.S. § 5511(a). Relatedly, the Committee received suggestions that the Rule require that counsel be appointed to represent the alleged incapacitated person in all cases. The statute provides that counsel may be appointed to represent the alleged incapacitated person "in appropriate cases." The Committee read this provision to grant the judge discretion to appoint counsel and not as a requirement that counsel be appointed in all cases.

The language of paragraphs (b)—(d) has been retained from the previous proposal. As mentioned in the prior publication report, this Rule intended to provide for the memorialization of the scope of counsel's services before commencement of the proceedings in order to avoid confusion about the role of counsel. The Rule also requires private counsel to set forth information regarding fees in the engagement letter. The reasonableness of all fees incurred on behalf of the alleged incapacitated person, whether attributed to private counsel or appointed counsel, are subject to court review. The Committee did not accept a suggestion that the Rule contain a range of reasonable fees, believing that reasonableness remains a matter of local practice.

Rule 14.5 Waiver or Modification of Bond

As previously proposed, this Rule would have permitted the court to consider whether a consumer report or proof of insurance should be filed as assurance after a bond has been waived or modified. The Committee believed that these two documents may cause the Rule to be too

narrowly applied because proof in paragraph (c) might operate to limit was constitutes proof of “good cause” in paragraph (b).

Aside from the statutory exception for corporate guardians, see 20 Pa.C.S. §§ 5121, 5122, bonding is generally going to sought to be initially waived or reduced for one of the following: 1) the guardian is unable to be bonded; 2) a bond is unnecessary due to assets of guardian; 3) a bond is unnecessary because of insurance; 4) a bond is unnecessary because the guardian’s character or relationship with the incapacitated person; or 5) the protection of a bond for smaller estates is outweighed by the cost. This Rule is premised on the guardian being bondable. With these examples, the existence of a consumer report or insurance policy may be relevant in some, but not all, instances. Further, a consumer report is practically meaningless if the basis for a subsequent bond modification is an increase or decrease in the size of the incapacitated person’s estate.

Accordingly, the Committee favored providing examples of “good cause” in the Explanatory Comment and revising paragraph (c) to require the court to consider the necessity and means of how “good cause” can be demonstrated in the future to provide assurance that “good cause” continues to exist. The revision allows the court, rather than the Rule, to determine what evidence is necessary to assure “good cause.”

Rule 14.6 Determination of Incapacity, Selection of Guardian

In response to a comment, the Committee revised paragraph (a) to require that the petitioner present the citation and proof of service at the adjudicatory hearing.

The omission of professional guardians from the list of eligible guardians was not intended to exclude them from consideration. Accordingly, “professional guardian” was added to paragraph (b)(1)(x) and the concluding sentence of paragraph (b)(2). This proposal does not define “professional guardian;” currently, that phrase will be subject to local interpretation. This matter remains under Committee study

A commenter suggested that a professional guardian be given greater consideration when selecting a guardian because the use of family members tends to lead to conflict. With regard to a guardian of the person, the Committee believed that family members are typically most knowledgeable of the incapacitated person’s preferences and values. Therefore, family members should be given higher preference than non-family members. Likewise for guardians of the estate, provided that the estate consists of minimal assets or the proposed guardian possesses the necessary skills and experience.

Rule 14.7 Order and Certificate

The Committee previously deliberated on whether to propose a form order adjudicating incapacity and appointing a guardian. The Committee initially concluded that the format and content of the order should be left to local practice subject to statutory requirements. However, the Committee received several comments regarding items that should be included in an order. After revisiting this issue, the Committee concluded that the format of orders should remain a matter of local practice. Further, the content of guardianship orders should be tailored to the needs of the incapacitated person. Mandating the use of a boilerplate form for individualized issues would either contain a kaleidoscope of options or vast sections of fillable blank text. The end result would be a “skeleton

form” that achieves little uniformity other than format, which was not a pressing concern to the Committee.

To address comment concerns, the Committee created Rule 14.7 to set forth topics that all orders must address, see paragraph (a)(1), and language the order must contain, see paragraph (a)(2). Regarding guardianships of the estate, paragraph (b)(1) would require orders to address bonding requirements and the authority of the guardian to spend principal without prior court approval. Paragraph (b)(2) would require all orders for guardians of the estate to contain language substantially in the form provided. The model language in paragraph (b)(2) is intended to address a recurring issue with financial institutions not readily permitting access to the incapacitated person’s accounts and to conduct transactions on behalf of the incapacitated person. Given that a financial institution may have branches in multiple counties, the Committee believed that similar model language should be used in every order to provide for consistent recognition and uniform effect.

The Committee retained the concept of a certificate being issued by the clerk of the orphans’ court to minimize the unnecessary disclosure of confidential matters involving the incapacitated person when dealing with third parties. However, the Committee reconsidered the previously proposed Certificate of Guardian form and its function. Questions arose whether the description of “plenary guardian” is of practical use in third party transactions. Further, the Committee learned that some orders contain the enumerated powers of a plenary guardian rather than specifying the type of guardianship. Additionally, the conditions placed on a limited guardian’s authority may be extensive and detailed.

Aware of the burden that may be placed on clerks of the orphans’ court having to interpret, identify, and transcribe into in a certificate the guardian’s authority set forth in the order of adjudication and appointment, the Committee elected to limit the scope of the Certificate of Guardianship to include only the model language in paragraph (b)(2). Moreover, the Committee’s concern about disclosing the entirety of the order has been tempered by the requirement that final orders be publicly accessible. See *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, § 9.0(B) (Eff. January 6, 2018).

Rule 14.8 Guardianship Reporting, Monitoring, Review, and Compliance

Based upon comments, the Committee considered whether the first report should be filed less than twelve months after the appointment, whether there should be shorter forms for estates of modest value, and whether the inventory should be filed within three months rather than ninety days. Further, the Committee considered whether reports should be as of the anniversary of the appointment or the month end of the month in which the anniversary occurs. Finally, the Committee considered whether the Rules provide sufficient time to complete and file a report before the report becomes delinquent.

Concerning the timing of the reports, the Committee favors adherence to the current practice of reports for the same period regardless of whether the report is for the first anniversary or the tenth anniversary. As for the concern that filing periods may end mid-month and make data collection necessary to complete the report difficult, the Committee believes that such challenges already exist and have been overcome. The Committee is not inclined to alter the current practice via rulemaking. Likewise, the

Committee does not favor the development of a short form for estates of modest value because value is not perfectly correlated with complexity and guardians can simply indicate “N/A” for those parts of the forms that are inapplicable.

Upon reviewing paragraphs (f)(1) and (f)(2), the Committee concluded that the guardian has at least 40 days to complete and file a required report before the judge is given notice. Accordingly, the Committee believes that 40 days was sufficient to perform this function.

Finally, the Committee is mindful that statute provides three months to file an inventory. *See* 20 Pa.C.S. § 5142. However, the Committee believes that an established number of days provides provided a more uniform approach than months of varying length.

In response to a comment, paragraph (a)(4) has been revised to additionally require the filing of a final report when an order has expired and no permanent order is entered. This revision is intended to address emergency orders in which no final order is entered.

The Committee considered a request to include a reference to the “Guardianship Tracking System” (GTS) in Rule 14.8. The GTS is an online system being developed by the Administrative Office of Pennsylvania Courts (AOPC) that will provide the means for guardians to file reports and update information online as opposed to the current paper process.

The GTS is intended to standardize reporting, prevent mistakes, and ensure complete reports. It will store and carryover information from year-to-year, which is intended to facilitate the filing of subsequent reports. Further, the GTS can track information and flag accounts where inputted data falls outside of established parameters, which is intended to enhance guardianship monitoring.

The AOPC expects to begin implementation sometime in mid-to-late 2018. Once the GTS is implemented, then the Rules will be amended to reflect to the availability of the system. However, until that time, the Committee believes that it would premature for the Rules to reference a system that is not yet in statewide operation.

Rule 14.9 Review Hearing

No substantive revisions were made to Rule 14.9. The Committee received a comment suggesting that this Rule should be more expansively drafted to include other types of petitions. The Committee intended for this Rule to be applicable to review petitions and not to the exclusion of all other petitions. The Committee believes that the addition of Rule 14.1 will better inform readers that other petitions are permitted under the Rules and the procedures to follow can be found in Chapter III.

Rule 14.10 Proceedings Relating to Real Estate

No substantive revisions were made to Rule 14.10. The Committee received a comment about whether paragraph (b) should require the guardian to inform the court if there is a known objection from an interested party concerning the proposed transaction. The Committee believes that an interested party objecting to a transaction should file a responsive pleading. *See also* 20 Pa.C.S. § 5521(e) (concerning knowledge of incapacitated person’s objection).

Rule 14.11 Transfer of Guardianship of the Person to Another State

A commenter questioned how the petitioner would be able to plead facts indicating that the guardianship will

be accepted by other state’s court. In response, the Committee revised paragraph (a)(4) to insert “likely” and add that likelihood may be established by evidence of the other state having procedures similar to Rule 14.13 (Acceptance of a Guardianship Transferred from Another State). Per the National Conference of Commissioners on Uniform State Laws’ website, as of August 8, 2017, Florida, Texas, Michigan, Wisconsin, and Kansas have not enacted legislation based upon the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Other comments indicated that anyone should be able to raise an objection and questioned whether an answer is necessary to raise an objection. The Committee believes that permitting anyone to raise an objection would invoke issues of standing. Rather, if someone other than those entitled to service pursuant to Rule 14.2(f)(2) wishes to raise an objection, then that person should seek to intervene pursuant to Rule 14.1(d). Additionally, an answer may include new matter, *see* Pa. O.C. Rule 3.6(a), both of which may be used as vehicles to raise objections depending on the basis for the objection.

Rule 14.12 Transfer of Guardianship of the Estate to Another State

See the Committee’s comments to Rule 14.11, *supra*.

Rule 14.13 Acceptance of a Guardianship Transferred from Another State

After further consideration by the Committee, paragraph (a)(3) was added to require the petition and order determining the initial incapacity be attached. The Committee believed this was important information for the receiving court to possess. Further, this information may be helpful in determining whether a modification hearing may be necessary.

As previously proposed, the Rule would have required the court to conduct a hearing within 90 days of the issuance of the final order. The Committee received several comments objecting to a rule-mandated hearing when the statute made such a hearing discretionary. The commenters contended that a hearing in every instance would be burdensome. The Committee agrees with these comments and deleted this requirement in its entirety, instead including a reference to the pertinent statute in the Explanatory Comment.

As previously proposed, the receiving court would enter an order “accepting jurisdiction” when it received the final order from the other state transferring the guardianship. A commenter questioned why the receiving court did not “accept the guardianship” rather than “accept jurisdiction.” The Committee agrees with this comment and has revised paragraph (e)(2) accordingly.

Rule 14.14 Forms

There are eight statewide forms associated with this Chapter, two of which (OC-03 and OC-04) are also associated with Pa. O.C. Rule 2.4 in Chapter II. Rule 14.12(e) & (f) are intended to incorporate those forms by reference. Likewise, Forms OC-3 and OC-04 are not replicated within the Appendix to Chapter XIV; rather, they are incorporated by reference. Those forms (OC-03 and OC-04), revised and repromulgated on September 1, 2016, are not being revised, rescinded, or replaced by this proposal.

No further revision is being proposed for the Citation with Notice (G-01) or the Notice of Filing (G-06) beyond that previously proposed at 46 Pa.B. 7934 (December 27, 2016).

The Report of the Guardian of the Estate (G-02), the Report of the Guardian of the Person (G-03), and the Inventory (G-04) forms were previously published for comment at 45 Pa.B. 1070 (March 7, 2015). The forms were republished at 46 Pa.B. 7934 (December 27, 2016). The comments related to these forms were shared with the Office of Elder Justice in the Courts for review and consideration by the Advisory Council on Elder Justice in the Courts. As such, these reports are not being republished for comment and, therefore, are not included in this proposal. Likewise, the Written Deposition form remains under review and is not included in this proposal.

After any necessary revisions and Supreme Court adoption, the forms will be posted permanently on the UJS website with the other Orphans' Court forms.

The Committee invites all comments, concerns, and suggestions regarding this proposal.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER I. PRELIMINARY RULES

Rule 1.5. Local Rules.

(a) All previously promulgated local rules are hereby vacated, effective September 1, 2016, except for those local rules promulgated under Chapter [14] XIV regarding guardianship of incapacitated persons, Chapter [15] XV regarding adoptions, and Chapter [16] XVI regarding proceedings pursuant to section 3206 of the Abortion Control Act.

(b) All previously promulgated local rules under Chapter XIV regarding guardianship of incapacitated persons are hereby vacated, effective (TBD).

[(b)] (c) The requirements for the promulgation and amendment of local procedural rules for orphans' court proceedings are set forth in Pennsylvania Rule of Judicial Administration 103(d).

[(c)] (d) The local rules applicable to practice in the Civil or Trial Division of the local Court of Common Pleas shall not be applicable in the Orphans' Court Division unless so directed by these Rules or by local rule adopted by the court of the particular judicial district in accordance with Pa.R.J.A. No. 103.

Note: Effective August 1, 2016, Pennsylvania Rule of Judicial Administration 103 was amended to consolidate and include all local rulemaking requirements. Accordingly, the rulemaking requirements under Pa. O.C. Rule 1.5 for the promulgation and amendment of local procedural rules for orphans' court proceedings were rescinded and replaced.

(Editor's Note: As part of this proposed rulemaking, the Committee is proposing to rescind Chapter XIV, Rules 14.1—14.5, which appears in 231 Pa. Code pages 14-1 to 14-2, serial pages (382157) and (382158), and replace it with Chapter XIV as follows. This chapter is new and printed in regular type to enhance readability.)

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule	
14.1.	Guardianship Petition Practice and Pleading.
14.2.	Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.
14.3.	Written Deposition.
14.4.	Counsel.

14.5.	Waiver or Modification of Bond.
14.6.	Determination of Incapacity, Selection of Guardian.
14.7.	Order and Certificate.
14.8.	Guardianship Reporting, Monitoring, Review, and Compliance.
14.9.	Review Hearing.
14.10.	Proceedings Relating to Real Estate.
14.11.	Transfer of Guardianship of the Person to Another State.
14.12.	Transfer of Guardianship of the Estate to Another State.
14.13.	Acceptance of a Guardianship Transferred from Another State.
14.14.	Forms.

Rule 14.1. Guardianship Petition Practice and Pleading.

(a) *Proceedings for Adjudication of Incapacity and Appointment of a Guardian.* The following petition practice and pleading requirements set forth in Chapter III (Petition Practice and Pleading) shall be applicable to proceedings for the adjudication of incapacity and appointment of a guardian:

- (1) Rule 3.2 (Headings; Captions);
- (2) Rule 3.3 (Contents of All Petitions; General and Specific Averments);
- (3) Rule 3.12 (Signing);
- (4) Rule 3.13 (Verification); and
- (5) Rule 3.14 (Amendment).

(b) *Responsive Pleadings to a Petition for Adjudication of Incapacity and Appointment of a Guardian Filed Pursuant to Rule 14.2.*

(1) Responsive pleadings allowed after filing of a petition are limited to those identified in Rule 3.6 (Pleadings Allowed After Petition) and shall be subject to Rules 3.10 (Denials; Effect of Failure to Deny) and 3.11 (Answer with New Matter).

(2) The alleged incapacitated person and any person or institution served pursuant to Rule 14.2(f)(2) may file a responsive pleading.

(3) Any responsive pleading shall be filed with the clerk and served pursuant to Rule 4.3 (Service of Legal Paper Other than Citations or Notices) on all others entitled to file a responsive pleading pursuant to paragraph (b)(2).

(4) All responsive pleading shall be filed and served no later than five (5) days prior to the hearing.

(5) The court shall determine any objections at the adjudicatory hearing.

(6) The court, in the interest of justice, may waive strict adherence to this paragraph.

(c) *All Other Petitions for Relief.* Unless otherwise provided by Rule in this Chapter, the petition practice and pleading requirements set forth in Chapter III shall be applicable to proceedings other than a petition seeking the adjudication of incapacity and appointment of a guardian. "Interested party," as used in Chapter III, shall include all those entitled to service pursuant to Rule 14.2(f).

(d) *Intervention.* A petition to intervene shall set forth the ground on which intervention is sought and a statement of the issue of law or question of fact the petitioner seeks to raise. The petitioner shall attach to the petition a copy of any pleading that the petitioner will file if permitted to intervene. A copy of the petition shall be served pursuant on all those entitled to service pursuant to Rule 14.2(f).

Explanatory Comment: This Rule is intended to specify the provisions of Chapter III that are applicable to proceedings under Chapter XIV and provide a procedure

for intervention in such proceedings. Those provisions not specified are inapplicable to proceedings under Chapter XIV. For proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and questions of fact prior to the adjudicatory hearing. However, given the abbreviated window for filing a response relative to other proceedings, compare Pa. O.C. Rule 3.7(a), the failure to file a responsive pleading should not operate to preclude an issue or question from being raised and considered at the hearing. Paragraph (b)(6) is intended to permit the court to waive strict adherence with the time requirements for a responsive pleading. Such pleadings should not be filed as a means of delaying the hearing on the merits of the petition.

The practice for other petitions is to follow the requirements of Chapter III. Nothing in this Rule is intended to prevent relief being sought on an expedited basis, provided the petitioner is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. *See* Pa. O.C. Rule 1.2(a).

Notice should be taken that Rules within Chapter XIV may have specific pleading and practice requires. *See, e.g.,* Pa. O.C. Rules 14.11—13.

Rule 14.2. Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.

(a) *Petition Contents.* A petition to adjudicate an individual as an incapacitated person shall state in plain language:

(1) Name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the alleged incapacitated person;

(2) Name, age, residence, and mailing address, if different, of the alleged incapacitated person;

(3) Names and addresses of the spouse, parents, and presumptive intestate heirs of the alleged incapacitated person and whether they are *sui juris* or *non sui juris*;

(4) Name and address of the person or institution providing residential services to the alleged incapacitated person;

(5) Names and addresses of other service providers and nature of services being provided;

(6) Reason(s) why guardianship is sought, including a description of functional limitations and the physical and mental condition of the alleged incapacitated person;

(7) If not plenary, then specific areas of incapacity over which it is requested that the guardian be assigned powers;

(8) The probability of whether the physical condition and mental condition of the alleged incapacitated person will improve;

(9) Whether there is an executed health care power of attorney, and if so, the name of the person designated in the document to act as the health care agent;

(10) Whether there is an executed power of attorney, and if so, the name of the person designated in the document to act as the agent;

(11) Whether there has been a prior incapacity hearing concerning the alleged incapacitated person, and if so, the name of the court, the date of the hearing, and the determination of capacity;

(12) Steps taken to find a less restrictive alternative than a guardianship;

(13) If a guardian of the estate is sought, then the gross value of the estate and net income from all sources, to the extent known;

(14) Whether there is a prepaid burial account, to the extent known;

(15) Whether the alleged incapacitated person is a veteran of the United States Armed Services, and whether the alleged incapacitated person is receiving benefits from the United States Veterans' Administration on behalf of himself or herself or through a spouse; and

(16) Name and address, if available, of any person proposed to receive a notice of filing pursuant to Rule 14.8(b).

(b) *Nomination of Guardian.* The petition for adjudication of incapacity shall also include:

(1) The name, address, and mailing address, if different, of the proposed guardian whom the petitioner nominates to be appointed guardian and the nominee's relationship, if any, to the alleged incapacitated person. If the proposed guardian is an entity, then the name of the person or persons to have direct responsibility for the alleged incapacitated person and the principal of the entity;

(2) Whether the proposed guardian has any adverse interest to the alleged incapacitated person;

(3) Whether the proposed guardian is available and able to visit or confer with the alleged incapacitated person;

(4) Whether the proposed guardian has completed any guardianship training, including the name of the training program, length of the training, and date of completion;

(5) Whether the proposed guardian is or was a guardian in any other matters and, if so, the number of active matters; and

(6) If the petition nominates a different proposed guardian of the estate from the proposed guardian of the person, then the information required in subparagraphs (b)(1)—(b)(5) as to each nominee.

(c) *Exhibits.* The following exhibits shall be appended to the petition:

(1) All powers of attorney, if available;

(2) The certified response to a Pennsylvania State Police criminal record check, with Social Security Number redacted, for each proposed guardian issued within six months of the filing of the petition.

(i) If any proposed guardian has resided outside the Commonwealth and was 18 years of age or older at any time within the previous five-year period, then the petition shall include a criminal record check obtained from the statewide database, or its equivalent, in each state in which such proposed guardian has resided within the previous five-year period.

(ii) When any proposed guardian is an entity, the person or persons to have direct responsibility for the alleged incapacitated person and the principal of the entity shall comply with the requirements of subparagraph (c)(2); and

Note: For information on requesting a criminal record check from the Pennsylvania State Police, see <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>.

(3) Any proposed orders as required by Rule 3.4(b).

(4) Any consent or acknowledgement of a proposed guardian to serve.

(d) *Emergency Guardian.* A petition seeking the appointment of an emergency guardian shall aver with specificity the facts giving rise to the emergent circumstances and why the failure to make such an appointment will result in irreparable harm to the person or estate of the alleged incapacitated person.

Note: Limitations on emergency guardianships are prescribed by statute. See 20 Pa.C.S. § 5513.

(e) *Separate Petitions.* Separate petitions shall be filed for each alleged incapacitated person.

(f) *Citation with Notice.* A citation with notice using the form provided in the Appendix to these Rules shall be attached to and served with the petition and any preliminary order as follows:

(1) Upon the alleged incapacitated person no less than 20 days prior to the hearing. Additionally, the content and terms of the petition shall be explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand.

(2) In the manner pursuant to Rule 3.5(b) no less than 20 days prior to the hearing upon:

(i) All persons who would be entitled to an intestate share in the estate of the alleged incapacitated person;

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

(iii) Such other parties as the court may direct, including service providers.

Note: For notice to the United States Veterans' Bureau, see 20 Pa.C.S. § 8411.

(3) For a petition seeking the appointment of an emergency guardian, the court may direct the manner of service as emergent circumstances warrant. Thereafter, notice shall be served in accordance with Rule 14.2(f)(2).

Explanatory Comment: Concerning the requirement of a criminal record check set forth in paragraph (c)(2), the Pennsylvania State Police has created the Pennsylvania Access to Criminal History ("PATCH") System to enable the public to obtain criminal history record checks via Internet request. The certified response from the Pennsylvania State Police criminal history record check need not be notarized to comply with the requirements of this rule. Any response other than "no record" may require supplementation at the discretion of the court.

Rule 14.3. Written Deposition.

Evidence of incapacity may be admissible through a written deposition using the form provided in the Appendix to these rules under the following circumstances:

(a) The deponent is qualified by training and experience in evaluating individuals with incapacities for the type alleged in the petition;

(b) The deponent signs, dates, and verifies the responses set forth in the form; and

(c) Incapacity is uncontested.

Explanatory Comment: This rule and referenced form are intended to permit the admission of expert testimony by written deposition rather than live testimony. See 20 Pa.C.S. § 5518. The rule is permissive; whether a deposition is admitted in lieu of testimony is at the discretion of the court. Nothing in this rule is

intended to preclude the court from requiring the deponent to appear or requiring supplementation if the court is not satisfied with the responses contained within the deposition. With the necessity of cross-examination, the use of a written deposition pursuant to this rule is not permitted when capacity is contested.

Rule 14.4. Counsel.

(a) If counsel for the alleged incapacitated person has not been retained, the petitioner shall notify the court in writing at least seven days prior to the adjudicatory hearing that the alleged incapacitated person is unrepresented.

(b) *Private Counsel.* If the alleged incapacitated person has retained private counsel, counsel shall prepare a comprehensive engagement letter for the alleged incapacitated person to sign, setting forth when and how counsel was retained, the scope of counsel's services, whether those services include pursuing any appeal, if necessary, how counsel will bill for legal services and costs and the hourly rate, if applicable, who will be the party considered responsible for payment, whether any retainer is required, and if so, the amount of the retainer. Counsel shall provide a copy of the signed engagement letter to the court upon request.

(c) *Appointed Counsel.* The court may appoint counsel if deemed appropriate in the particular case. Any such order appointing counsel shall delineate the scope of counsel's services and whether those services include pursuing any appeal, if necessary.

(d) *Other Counsel.* Counsel for any other party shall enter an appearance in accordance with Rule 1.7(a).

Explanatory Comment: Reasonable counsel fees, when appropriate, should be paid from the estate of the alleged incapacitated person whenever possible. If the alleged incapacitated person is unable to pay for counsel, then the court may order counsel fees and costs to be paid by the county. See 20 Pa.C.S. § 5511(c). Any fee dispute should be resolved in a timely and efficient manner to preserve resources in order to maintain the best possible quality of life for the incapacitated person.

Rule 14.5. Waiver or Modification of Bond.

(a) *Request.* A request for the court to waive or modify a bond requirement for a guardian of the estate may be raised within the petition for adjudication of incapacity or at any other time by petition.

(b) *Waiver or Modification.* The court may order the waiver or modification of a bond requirement for good cause.

(c) *Assurance.* If the court waives or modifies a bond requirement, then the court shall consider the necessity and means of periodic demonstration of continued good cause.

Explanatory Comment: Pursuant to 20 Pa.C.S. § 5515, the provisions of Sections 5121—5123 of Title 20 relating to bonding requirements are incorporated by reference into Chapter 55 proceedings. When property is held by the incapacitated person as fiduciary, see 20 Pa.C.S. § 5516. "Good cause" may include, but is not limited to, an estate of nominal value, fluctuation in the size of the estate, adequate insurance maintained by the guardian against risk of loss to the estate, the credit worthiness of the guardian, and assets of the guardian relative to the value of the estate.

Rule 14.6. Determination of Incapacity, Selection of Guardian.

(a) *Determination of Incapacity.* The procedure for determining incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5511, 5512, and 5512.1. In addition, the petitioner shall present the citation and proof of service at the hearing.

(b) *Selection of Guardian.* If guardianship services are needed, then the court shall appoint the person nominated as such in a power of attorney, except for good cause shown or disqualification. Otherwise, the court shall consider the eligibility of one or more persons to serve as guardian in the following order:

(1) *Guardian of the Person:*

- (i) The guardian of the estate;
- (ii) The spouse, unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member;
- (ix) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to, religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions; or
- (x) Other qualified proposed guardian, including a professional guardian.

(2) *Guardian of the Estate.* When the estate of the incapacitated person consists of minimal assets or where the proposed guardian possesses the skills and experience necessary to manage the finances of the estate:

- (i) The guardian of the person;
- (ii) The spouse unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member; or
- (ix) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to, religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions.

Where no individual listed in subparagraphs (i)—(ix) of paragraph (b)(2) possesses the skills and experience necessary to manage the finances of the estate, the guardian of the estate may be any qualified proposed guardian, including a professional guardian or corporate fiduciary.

Note: See *In re Peery*, 727 A.2d 539 (Pa. 1999) (holding a person does not require a guardian if there is no need for guardianship services). See also 20 Pa.C.S. § 5511(f) (who may be appointed guardian).

Rule 14.7. Order and Certificate.

(a) *Order Adjudicating Incapacity and Appointing Guardian.*

(1) An order adjudicating incapacity and appointing a guardian shall address:

- (i) the type of guardianship being ordered and any limits, if applicable;
- (ii) the continued effectiveness of any previously executed powers of attorney and the authority of the agent;
- (iii) the necessity of filing reports pursuant to Rule 14.8(a); and
- (iv) person or persons entitled to receive a notice of filing pursuant to Rule 14.8(b).

(2) An order adjudicating incapacity and appointing a guardian shall contain a provision substantially in the following form:

[Incapacitated person] is hereby notified of the right to seek reconsideration of this Order pursuant to Rule 8.2 and the right to appeal this Order within thirty (30) days from the date of this Order by filing a Notice of Appeal with the Clerk of the Orphans' Court. [Incapacitated person] may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. [Incapacitated person] has a right to be represented by an attorney to file an appeal or to seek modification or termination of this guardianship. If the assistance of counsel is needed and [Incapacitated person] cannot afford an attorney, an attorney will be appointed to represent [Incapacitated person] free of charge.

(b) *Order Adjudicating Incapacity and Appointing Guardian of Estate.*

(1) In addition to the requirements set forth in paragraph (a)(1), an order adjudicating incapacity and appointing a guardian of the estate shall address:

- (i) whether a bond is required and when the bond is to be filed; and
- (ii) whether the guardian can spend principal without prior court approval.

(2) In addition to the requirement set forth in paragraph (a)(2), an order adjudicating incapacity and appointing a guardian of the estate shall contain a provision substantially in the following form:

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages to grant access to the guardian of the incapacitated person's estate to any and all assets, records, accounts maintained for the benefit of the incapacitated person, and the guardian of the incapacitated person's estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said assets. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

(c) *Certificate of Guardianship of Estate.* Upon the request of the guardian of the estate, the clerk shall issue a certificate substantially in the following form:

(Caption)

I CERTIFY that on _____, after giving full consideration to the factors set forth in Chapter 55 of the Probate, Estate, and Fiduciaries Code, 20 Pa.C.S. § 5501, *et seq.*, in the above-captioned matter, the Court adjudged _____ an incapacitated person and appointed _____ as plenary guardian of the estate.

FURTHER, I CERTIFY the Court, *inter alia*, ordered:

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages to grant access to the guardian of [incapacitated person]'s estate to any and all assets, records, accounts maintained for the benefit of [incapacitated person], and the guardian of [incapacitated person]'s estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said assets. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

Witness my hand and seal of said Court this ___ day of _____, ____.

[seal]

CLERK OF ORPHANS' COURT

Explanatory Comment: The requirements of paragraph (a) are intended to apply to all final guardianship orders. The items addressed and contained in the order, as set forth in paragraphs (a) and (b), are not exhaustive. The court may fashion a guardianship of a person order to inform health care providers of the guardian's authority, including the authority to give informed consent to proposed treatment, to share information, and to make decisions for the incapacitated person. *See also In re DHL*, 2 A.3d 505 (Pa. 2010) (discussing whether guardian has authority concerning life-preserving care); 20 Pa.C.S. § 5460(a) (requiring the court to determine the extent of agent's authority under a health care power of attorney); 20 Pa.C.S. § 5604(c)(3) (requiring the court to determine the extent of agent's authority under a durable power of attorney).

Rule 14.8. Guardianship Reporting, Monitoring, Review, and Compliance.

(a) *Reporting.* A guardian shall file the following reports with the clerk:

- (1) An inventory by the guardian of the estate within 90 days of such guardian's appointment;
- (2) An annual report by the guardian of the estate one year after appointment and annually thereafter;
- (3) An annual report by the guardian of the person one year after appointment and annually thereafter;
- (4) A final report by the guardian of the person and the guardian of the estate within 60 days of the death of the incapacitated person, an adjudication of capacity, a change of guardian, or the expiration of an order where no permanent order is entered; and
- (5) A final report from the guardian of the person and the guardian of the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

(b) *Notice of Filing.* If the order appointing the guardian identifies the person or persons entitled to receive notice of the filing of any report set forth in paragraph (a) pursuant to Rule 14.7(a)(1)(iv), the guardian shall serve a notice of filing within ten days of filing a report using the

form provided in the Appendix to these rules. Service shall be in accordance with Rule 4.3.

(c) *Design of Forms.* The Court Administrator of Pennsylvania, in consultation with the Orphans' Court Procedural Rules Committee and the Office of Elder Justice in the Courts, shall design and publish forms necessary for the reporting requirements set forth in paragraph (a).

(d) *Monitoring.* The clerk or the court's designee shall monitor the guardianship docket to confirm the guardian's compliance with the reporting requirements set forth in paragraph (a).

(e) *Review.* The court or its designee shall review the filed reports.

(f) *Compliance.* To ensure compliance with these reporting requirements:

(1) If any report is deemed incomplete or is more than 20 days delinquent, then the clerk or the court's designee shall serve notice on the guardian directing compliance within 20 days, with a copy of the notice sent to the court and the guardian's counsel, if represented.

(2) If the guardian fails to comply with the reporting requirements within 20 days of service of the notice, then the clerk or the court's designee shall file and transmit a notice of deficiency to the adjudicating judge and serve a notice of deficiency on those persons named in the court's order pursuant to Rule 14.7(a)(1)(iv) as entitled to receive a notice of filing.

(3) The court may thereafter take such enforcement procedures as are necessary to ensure compliance.

Explanatory Comment: The reporting forms are available at TBD. This Rule is silent as to the manner of proceeding when reports are deficient or warrant further investigation, or when the guardian is recalcitrant after being given notice by the clerk or the court's designee. In its discretion, the court may order further documentation, conduct a review hearing, or take further action as may be deemed necessary, including, but not limited to, removal of the guardian or contempt proceedings.

Rule 14.9. Review Hearing.

(a) *Initiation.* A review hearing may be requested by petition or ordered by the court.

(b) *Petition.* A petition for a review hearing shall set forth:

- (1) the name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the incapacitated person;
- (2) the date of the adjudication of incapacity;
- (3) the names and addresses of all guardians;
- (4) if the incapacitated person has been a patient in a mental health facility, the name of such facility, the date of admission, and the date of discharge;
- (5) the present address of the incapacitated person, and the name of the person with whom the incapacitated person is living;
- (6) the names and addresses of the presumptive adult intestate heirs of the incapacitated person; and
- (7) an averment that:
 - (A) there has been significant change in the incapacitated person's capacity and the nature of that change;
 - (B) there has been a change in the need for guardianship services and the nature of that change; or

(C) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person, and details as to the duties that the guardian has failed to perform or has performed but are allegedly not in the best interests of the incapacitated person.

(c) *Service.* The petition shall be served in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.2(f)(2).

(d) *Hearing.* The review hearing shall be conducted promptly after the filing of the petition with notice of the hearing served upon those served with the petition pursuant to paragraph (c).

Explanatory Comment: Nothing in this rule is intended to preclude the court from scheduling a review hearing upon its own initiative or in the order adjudicating incapacity and appointing a guardian. For the court's disposition of a petition for a review hearing and evidentiary burden of proof, see 20 Pa.C.S. § 5512.2.

Rule 14.10. Proceedings Relating to Real Estate.

(a) *Applicable Rules.* A petition for the public or private sale, exchange, lease, or mortgage of real estate of an incapacitated person or the grant of an option for the sale, exchange, or lease of the same shall conform as far as practicable to the requirements of these Rules for personal representatives, trustees and guardians of minors in a transaction of similar type.

(b) *Objection.* The guardian shall include in the petition an averment as to whether the guardian knows or has reason to know of any objection of the incapacitated person to the proposed transaction. The nature and circumstances of any such objection, including whether expressed before or after the adjudication of incapacity, shall be set forth in the petition.

Explanatory Comment: See Pa. O.C. Rule 5.10, 5.11, and 5.12.

Rule 14.11. Transfer of Guardianship of the Person to Another State.

(a) *Petition.* A petition filed by a guardian appointed in Pennsylvania to transfer the guardianship of the person to another state must plead sufficient facts to demonstrate:

- (1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (2) plans for care and services for the incapacitated person in the other state are reasonable and sufficient;
- (3) the court to which the guardianship will be transferred; and
- (4) the guardianship will likely be accepted by the other state's court.

(b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) *Objections.* Any person entitled to service of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) *Hearing.* If needed, the court shall conduct an evidentiary hearing on the petition.

(e) *Orders.* Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

(1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and

(2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921-5922. This petition may also include a request to transfer the guardianship of the estate to another state as provided in Rule 14.12. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Rule 14.12. Transfer of Guardianship of the Estate to Another State.

(a) *Petition.* A petition filed by a guardian appointed in Pennsylvania to transfer the guardianship of the estate must plead sufficient facts to demonstrate:

- (1) the incapacitated person is:
 - (A) physically present in the other state;
 - (B) reasonably expected to move permanently to the other state; or
 - (C) significantly connected to the other state.
- (2) adequate arrangements will be made for the management of the incapacitated person's estate;
- (3) the court to which the guardianship will be transferred; and
- (4) the guardianship will likely be accepted by the other state's court.

(b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) *Objections.* Any person entitled to service of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) *Hearing.* If needed, the court shall conduct an evidentiary hearing on the petition.

(e) *Orders.* Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

(1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and

(2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921-5922. For factors used to determine the significance of the incapacitated person's

connection with the other state, see 20 Pa.C.S. § 5911(b). This petition may also include a request to transfer the guardianship of the person to another state as provided in Rule 14.11. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Rule 14.13. Acceptance of a Guardianship Transferred from Another State.

(a) A petition to confirm the transfer of a guardianship from another state to Pennsylvania shall:

- (1) plead sufficient facts to demonstrate:
 - (i) the eligibility of the guardian for appointment in Pennsylvania;
 - (ii) the proceeding in the other state approving the transfer was conducted in a manner similar to Rules 14.11 or 14.12 (concerning transfer of guardianship);

(2) include a certified copy of the other state's provisional order approving the transfer; and

(3) include a certified copy of the petition and order determining initial incapacity in the other state.

(b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 with notice in accordance with Rule 3.5(b) upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) *Objections.* Any person entitled to notice of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) *Hearing.* If needed, the court shall conduct an evidentiary hearing on the petition.

(e) *Orders.* Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

- (1) issue an order provisionally granting the petition to confirm transfer of the guardianship; and
- (2) upon receiving a final order from the court transferring the guardianship, the court shall issue a final order accepting the guardianship, appointing the guardian appointed previously by the court of the other state as the guardian in Pennsylvania, and directing the guardian to comply with the reporting requirements of Rule 14.8.

Explanatory Comment: See Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. § 5922(f) (court's consideration of a modification of guardianship).

Rule 14.14. Forms.

The following forms located in the Appendix shall be used exclusively:

- (a) Important Notice—Citation with Notice (G-01);
- (b) Report of Guardian of the Estate (G-02);
- (c) Report of Guardian of the Person (G-03);
- (d) Guardian's Inventory (G-04);
- (e) Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-03);
- (f) Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-04);
- (g) Written Deposition (G-05); and
- (h) Notice of Filing (G-06).

Explanatory Comment: In accordance with Rule 1.8, these forms must be used exclusively and cannot be replaced or supplanted by a local form.

INDEX TO APPENDIX

ORPHANS' COURT AND REGISTER OF WILLS FORMS ADOPTED BY SUPREME COURT PURSUANT TO Pa. O.C. Rule 1.8

Available as Fill-in Forms on Website of Administrative Office of Pennsylvania Courts
<http://www.pacourts.us/Forms/OrphansCourtForms.htm>
 Orphans' Court and Administration Forms
 * * * * *

B. Guardianship Forms

- 1. Important Notice—Citation with Notice (Pa. O.C. Rule [14.5] 14.2) G-01
- 2. [**Annual Report—**] **Report of Guardian of Estate** G-02
- 3. [**Annual Report—**] **Report of Guardian of Person** G-03
- 4. **Guardian's Inventory** G-04
- 5. **Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.** 4 OC-03*
- 6. **Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4.** OC-04**
- 7. **Written Deposition** **G-05**
- 8. **Notice of Filing** **G-06**

C. Abortion Control Act Forms

* * * * *

*Form OC-3 is not reprinted here and is located under Audit and Administration Forms at No. 3.

**Form OC-4 is not reprinted here and is located under Audit and Administration Forms at No. 4.

COURT OF COMMON PLEAS OF
ORPHANS' COURT DIVISION

To _____ :

**IMPORTANT NOTICE
CITATION WITH NOTICE**

A Petition has been filed with this Court to have you declared an Incapacitated Person. If the Court finds you to be an Incapacitated Person, your rights will be affected, including your right to manage money and property and to make decisions. A copy of the Petition which has been filed by is attached.

You are hereby ordered to appear at a hearing to be held in Courtroom No. _____, _____, Pennsylvania on _____, 20____ at _____ .m. to tell the Court why it should not find you to be an Incapacitated Person and appoint a Guardian to act on your behalf.

To be an Incapacitated Person means that you are not able to receive and effectively evaluate information and communicate decisions and that you are unable to manage your money and/or other property, or to make necessary decisions about where you will live, what medical care you will get, or how your money will be spent.

At the hearing, you have the right to appear, to be represented by an attorney, and to request a jury trial. If you do not have an attorney, you have the right to request the Court to appoint an attorney to represent you and to have the attorney's fees paid for you if you cannot afford to pay them yourself. You also have the right to request that the Court order that an independent evaluation be conducted as to your alleged incapacity.

If the Court decides that you are an Incapacitated Person, the Court may appoint a Guardian for you, based on the nature of any condition or disability and your capacity to make and communicate decisions. The Guardian will be of your person and/or your money and other property and will have either limited or full powers to act for you.

To: _____:

If the Court finds you are totally incapacitated, your legal rights will be affected and you will not be able to make a contract or gift of your money or other property. If the Court finds that you are partially incapacitated, your legal rights will also be limited as directed by the Court.

If you do not appear at the hearing (either in person or by an attorney representing you) the Court will still hold the hearing in your absence and may appoint the Guardian requested.

By: _____
Orphans' Court Clerk

COURT OF COMMON PLEAS OF

ORPHANS' COURT DIVISION

NOTICE OF FILING

ESTATE/GUARDIANSHIP OF _____,
AN INCAPACITATED PERSON

_____, GUARDIAN

No. _____

I certify that on _____ I filed the following documents:

- Inventory Amended Inventory
- Annual Report - Guardian of the Person Annual Report - Guardian of the Estate
- Final Report

A copy of this Notice of Filing is being served on the following person(s) designated by court order and in the following manner:

1. _____

- By mail By fax By personal delivery By e-mail if requested

2. _____

- By mail By fax By personal delivery By e-mail if requested

3. _____

- By mail By fax By personal delivery By e-mail if requested

4. _____

- By mail By fax By personal delivery By e-mail if requested

Submitted by:

Date

Signature

Name (print or type)

Address

City, State, Zip

Telephone

Email

Instructions for Document Access

If you are one of the individuals noted above to who this notice of filing was sent, you may access and view the documents filed by presenting this notice of filing along with proper identification to the Clerk of the Orphans' Court in the county listed on the previous page.

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Rule of Judicial Administration WJ507—Raw Notes. Transcripts; No. 3 of 2017

Administrative Order of Court

And Now, this 31st day of July, 2017, *It Is Hereby Ordered* that Westmoreland County Rule of Judicial Administration WJ507 is hereby repealed. This change is effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD E. McCORMICK, Jr.,
President Judge

[Pa.B. Doc. No. 17-1372. Filed for public inspection August 18, 2017, 9:00 a.m.]

SUPREME COURT

Rescission of Order Filed at No. 46 Judicial Administration Doc. No. 1; No. 486 Judicial Administration Doc.

Order

Per Curiam

And Now, this 7th day of August, 2017, it is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Order filed December 6, 1983 at No. 46 Judicial Administration Docket No. 1, amended January 4, 1984 (204 Pa. Code § 29.10) (relating to Supreme Court review of first-degree murder cases pursuant to 42 Pa.C.S. § 9711(h)(3)(iii) (repealed)), is hereby *Rescinded*.

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

(Editor’s Note: Under this Supreme Court order, the text of 204 Pa. Code § 29.10 will be deleted.)

[Pa.B. Doc. No. 17-1373. Filed for public inspection August 18, 2017, 9:00 a.m.]
