

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CH. 5 ]

Order Amending Rule 531 of the Rules of Appellate Procedure; No. 262 Appellate Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 7th day of June, 2016, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 44 Pa.B. 5324 (August 9, 2014):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 531 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 October 1, 2016.

#### 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

##### AMICUS CURIAE

Rule 531. Participation by *Amicus Curiae*.

[ (a) *Briefs*.—Anyone interested in the questions involved in any matter pending in an appellate court, excluding Petitions for Allowance of Appeal, although not a party, may, without applying for leave to do so, file a brief *amicus curiae* in regard to those questions.

(1) Unless otherwise ordered by the court, any *amicus curiae* shall file and serve its brief in the manner and number required and within the time allowed by these rules with respect to the party whose position as to affirmance or reversal the *amicus* brief will support, or with respect to the appellant, if the *amicus* brief does not support the position of any party.

(2) In an appeal proceeding under Rules 2154(b), 2185(c) and 2187(b), any *amicus curiae* shall file and serve its brief within the time allowed by these rules for service of the advance text of the brief by the party whose position as to affirmance or reversal the *amicus* brief will support or, if the *amicus* brief does not support the position of any party, within the time allowed by these rules for service of the advance text by the appellant. Alternatively, the *amicus curiae* may, but is not required to, serve an advance text and then file and serve a definitive copy of its brief. If the *amicus curiae* chooses to serve an advance copy and then file and serve a definitive copy, its deadlines for each are the same

as for the party whose position as to affirmance or reversal the *amicus* brief supports or, if the *amicus* brief does not support the position of any party, as for the appellant. ]

(a) *General*.—An *amicus curiae* is a non-party interested in the questions involved in any matter pending in an appellate court.

#### (b) *Briefs*

(1) *Amicus Curiae Briefs Authorized*.—An *amicus curiae* may file a brief (i) during merits briefing; (ii) in support of or against a petition for allowance of appeal, if the *amicus curiae* participated in the underlying proceeding as to which the petition for allowance of appeal seeks review; or (iii) by leave of court. An *amicus curiae* does not need to support the position of any party in its brief.

(2) *Content*.—An *amicus curiae* brief must contain a statement of the interest of *amicus curiae*. The statement of interest shall disclose the identity of any person or entity other than the *amicus curiae*, its members, or counsel who (i) paid in whole or in part for the preparation of the *amicus curiae* brief or (ii) authored in whole or in part the *amicus curiae* brief. It does not need to contain a Statement of the Case and does not need to address jurisdiction or the order or other determinations in question.

(3) *Length*.—An *amicus curiae* brief under subparagraph (b)(1)(i) is limited to 7,000 words. An *amicus curiae* brief under subparagraph (b)(1)(ii) is limited to 4,500 words. An *amicus curiae* brief under subparagraph (b)(1)(iii) is limited to the length specified by the court in approving the motion or, if no length is specified, to half the length that a party would be permitted under the rules of appellate procedure. Any *amicus curiae* brief must comply with the technical requirements for briefs, including certificates of compliance, set forth in Pa.R.A.P. 1115, 2135(b)—(d), 2171—2174, and 2187, or other pertinent rules.

(4) *Time for filing briefs*.—An *amicus curiae* brief must be filed on or before the date of the filing of the party whose position as to affirmance or reversal the *amicus curiae* will support. If the *amicus curiae* will not support the position of any party, the *amicus curiae* brief must be filed on or before the date of the appellant's filing. In an appeal proceeding under Pa.R.A.P. 2154(b), 2185(c), and 2187(b), the *amicus curiae* must file on or before the date of service of the advance text by the party whose position as to affirmance or reversal the *amicus curiae* supports or, if the *amicus curiae* does not support the position of any party, on or before the date of service of the advance text of the appellant.

[ (b) ] (c) *Oral argument*.—Oral argument may be presented by *amicus curiae* only as the appellate court may direct. Requests for leave to present oral argument shall be by application and will be granted only for extraordinary reasons.

*Official Note*: [ Where the *amicus* cannot comply with the requirements of this rule because of ignorance of the pendency of the question, relief may be

sought under Rule 105(b). The last eight words of the rule are new. In *Piccirilli Bros. v. Lewis*, 282 Pa. 328, 336, 127 Atl. 832, 835 (1925) the court noted the applicability of this rule to public officers who are represented by official counsel with an adverse position.] The Pennsylvania Supreme Court has held that “[ a ]n *amicus curiae* is not a party and cannot raise issues that have not been preserved by the parties.” *Commonwealth v. Cotto*, 753 A.2d 217, 224 n.6 (Pa. 2000). In addition, the Court shares the view of the United States Supreme Court that “[ a ]n *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.” See U.S. Supreme Ct. R. 37.1.

The rule allows interested persons to be *amicus curiae* as to one or more questions during the merits briefing on that question. An *amicus curiae* can file a brief of right in support of or against a petition for allowance of appeal only if the *amicus curiae* participated in the underlying proceedings giving rise to the order for which further review is sought. Any persons wishing to file *amicus curiae* briefs in any other circumstance must seek leave of court.

The 2016 amendment to the rule set forth content and length requirements for *amicus curiae* briefs. The amendment also established a requirement that all *amicus curiae* briefs include a statement of interest disclosing whether any party to the appeal has paid in whole or in part for the preparation of the brief.

The 2011 amendment to the rule clarified when those filing *amicus curiae* briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records ([ Rule ] Pa.R.A.P. 2154(b)), advance text ([ Rule ] Pa.R.A.P. 2187(b)) and definitive copies ([ Rule ] Pa.R.A.P. 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by [ Rule 2187 ] Pa.R.A.P. 2185(c). At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee’s advance text ([ Rule ] Pa.R.A.P. 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advance text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing *amicus curiae* briefs may choose to serve an advance text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.

[Pa.B. Doc. No. 16-1055. Filed for public inspection June 24, 2016, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE  
[ 210 PA. CODE CH. 17 ]

Order Amending Rule 1737 of the Rules of Appellate Procedure; No. 263 Appellate Procedural Rules Doc.

Order

*Per Curiam*

And Now, this 7th day of June, 2016, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 6113 (October 10, 2015):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 1737 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 October 1, 2016.

Annex A

TITLE 210. APPELLATE PROCEDURE  
PART I. RULES OF APPELLATE PROCEDURE  
ARTICLE II. APPELLATE PROCEDURE  
CHAPTER 17. EFFECT OF APPEALS;  
SUPERSEDEAS AND STAYS  
STAY OR INJUNCTION IN CIVIL MATTERS

Rule 1737. [ **Objections to Security** ] Modification of Terms of *Supersedeas*.

(a) The [ **lower** ] trial court or the appellate court, may at any time, upon application of any party and after notice and opportunity for hearing[ , **upon cause shown** ]:

(1) [ **Require** ] require security of a party otherwise exempt from the requirement of filing security[ , **or increase, decrease or eliminate the amount of any security which has been or is to be filed.** ] upon cause shown;

(2) [ **Strike** ] strike off security improperly filed[ . ];

(3) [ **Permit** ] permit the substitution of surety and enter an exoneration of the former surety[ . ] **or**

(4) **increase, decrease, eliminate, or otherwise alter the amount or type of any security that has been or is to be filed by a party, upon cause shown for the modification.**

(b) The parties may at any time stipulate to the type or amount of security and, upon filing, such a written stipulation will act to set the terms of a *supersedeas* of the judgment to the same extent as would an order of the court.

*Official Note:* The amount of automatic *supersedeas* of money judgments has been set at 120 percent of the verdict, and in most instances that amount will assure payment of a judgment and interest accrued during an appeal without imposing undue hardship on an appellant. See Pa.R.A.P. 1731. Nonetheless, there may be circumstances in which it would be appropriate for a court to modify the default approach to security, either in type, method, or time for posting, or in amount. Courts

have the discretion to increase or decrease and to eliminate the requirement that security be posted, based upon the proofs offered by the parties. The parties by agreement may also determine to modify the amount or type of *supersedeas*, particularly given that Pa.R.A.P. 2771 provides for the premium paid for the cost of *supersedeas* bonds or other appellate bonds to be taxable as a cost on appeal.

A party may seek appellate review of an order resolving an application under this rule. See Pa.R.A.P. 1732 and Pa.R.A.P. 3315.

[Pa.B. Doc. No. 16-1056. Filed for public inspection June 24, 2016, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 1920 ]

#### Order Amending Rule 1920.33 of the Rules of Civil Procedure; No. 644 Civil Procedural Rules Doc.

#### Order

#### *Per Curiam*

*And Now*, this 10th day of June, 2016, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 45 Pa.B. 6975 (December 12, 2015):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1920.33 of the Pennsylvania Rules of Civil Procedure are 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, 2016.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.33. Joinder of Related Claims. [ **Distribution of Property** ] **Equitable Division**. Enforcement.

(a) [ **Each party shall file an inventory specifically describing all property owned or possessed at the date of separation. A party may not file a motion for the appointment of a master or a request for court action regarding equitable distribution until at least 30 days following the filing of that party's inventory. The other party shall file the inventory within 20 days of service of the moving party's inventory. The inventory shall set forth as of the date of separation:** ] If a pleading or petition raises a claim for equitable division of marital property under Section 3502 of the Divorce Code, the parties shall file and serve on the other party an inventory, which shall include the information in subdivisions (1) through (3) and shall be substan-

tially in the form set forth in Pa.R.C.P. No. 1920.75. Within 20 days of service of the moving party's inventory, the non-moving party shall file an inventory. A party may not file a motion for the appointment of a master or a request for court action regarding equitable division until at least 30 days following the filing of that party's inventory.

The inventory shall set forth as of the date of separation:

(1) [ a specific description of all marital property in which either or both have a legal or equitable interest individually or with any other person and the name of such other person and all marital liabilities; ] a specific description of the marital assets, which either or both parties have a legal or equitable interest, individually or jointly with another person, the name of the co-owners, if applicable, and the marital liabilities, which either party incurred individually or jointly with another person, and the name of any co-debtors, if applicable;

(2) a specific description of [ **all property** ] the assets or liabilities [ **that are** ] claimed to be non-marital and the basis for such claim; and

(3) the estimated value of [ **each item of** ] the marital and non-marital [ **property** ] assets and the amount [ **of** ] due for each marital and non-marital liability.

**Official Note:** Subdivision (c) [ **of this rule** ] provides for sanctions for failure to file an inventory as required by [ **this** ] subdivision (a). An inventory may be incomplete [ **where the party filing it does not know of all of the property** ] if a party lacks comprehensive knowledge of the assets and liabilities involved in the claim for equitable [ **distribution** ] division. Consequently, the rule does not contemplate that a party will be precluded from presenting testimony or offering evidence as to [ **property** ] assets or liabilities omitted from the inventory. The omission may be [ **supplied by** ] remedied by inclusion of the omitted information in the pre-trial statement required by subdivision (b).

(b) Within the time required by order of court or written directive of the master or, if none, at least [ **sixty** ] 60 days before the scheduled hearing on the claim for [ **the determination and distribution of property, each party** ] equitable division, the parties shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying:

[ (i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon; and

(ii) the non-marital assets, their value, the date of the valuation, and any liens or encumbrances thereon; ]

(i) The marital assets:

a. the value;

b. the date of the valuation;

- c. the value of any non-marital portion;
- d. the facts and documentation upon which the party relies to support the valuation; and
- e. any liens or encumbrances associated with the asset.

(ii) The non-marital assets:

- a. the value;
- b. the date of the valuation;
- c. the facts and documentation upon which the party relies to support the valuation; and
- d. any liens or encumbrances associated with the asset.

(2) the name and address of [ each expert whom ] the expert witness(es) the party intends to call at trial [ as a witness ]. A report of each expert witness listed shall be attached to the pre-trial statement. The report shall describe the [ witness's ] expert's qualifications and experience[ and ], state the substance of the facts and opinions to which the expert is expected to testify and [ a summary of ] summarize the grounds for each opinion;

(3) the name, address, and a short summary of the testimony of [ each person ] the witnesses, other than the party, whom the party intends to call at trial [ as a witness ];

(4) a list of [ all of the ] exhibits [ which ] that the party expects to offer [ in ] into evidence[ , each containing an identifying mark. Any exhibits that do not exceed ]. Exhibits not exceeding three pages shall be attached to the pre-trial statement and shall have an identifying exhibit number affixed to or incorporated into the document, and [ any exhibits which exceed ] exhibits exceeding three pages shall be described specifically and shall have an exhibit number in the description;

(5) the party's gross income from all sources, [ each payroll deduction, and the party's net income, including ] payroll deductions, net income, and the party's most recent state and federal income tax returns and pay stubs;

(6) if the party intends to offer [ any ] testimony as to his or her expenses, an Expense Statement in the form required by [ Rule ] Pa.R.C.P. No. 1910.27(c)(2)(B);

[ (7) the value of a pension or retirement benefits, the marital portion thereof, and the facts and documentation upon which the party relies to support the valuation;

(8) ] (7) if there is a claim for counsel fees, the amount of fees to be charged, the basis for the charge, and a detailed itemization of the services rendered;

[ (9) where there is a dispute, the description and value of any items of ] (8) the description and value of disputed tangible personal property, specifically the personalty contemplated by item number 25 of the form in Pa.R.C.P. No. 1920.75, the method of [ evaluating ] valuing each item, and the evidence, including documentation, to be offered in support of the valuation;

[ (10) a list of marital debts including the amount of each debt as of the date of separation, the date on which the debt was initially incurred, the initial amount of the debt and its purpose, the amounts and dates of payments made since the date of separation, and the evidence that will be offered in support of the claim; ]

(9) a list of liabilities, which may be in chart form, specifying:

(i) The marital liabilities:

- a. amount of the liability;
- b. date of the valuation;
- c. amount of any non-marital portion;

d. the facts and documentation upon which the party relies to support the valuation; and

e. amount, if any, of payments made on the liabilities after the date of separation.

(ii) The non-marital liabilities:

- a. amount of the liability;
- b. date of the valuation; and

c. the facts and documentation upon which the party relies to support the valuation.

[ (11) ] (10) a proposed resolution of the economic issues raised in the pleadings.

(c) If a party fails to file either an inventory, as required by subdivision (a), or a pre-trial statement, as required by subdivision (b), the court may make an appropriate order under [ Rule ] Pa.R.C.P. No. 4019(c) governing sanctions.

(d)(1) A party who fails to comply with a requirement of subdivision (b) [ of this rule shall, except upon good cause shown, ] may be barred from offering [ any ] testimony or introducing [ any ] evidence in support of or in opposition to claims for the matters [ not covered therein ] omitted.

(2) A party [ shall, except upon good cause shown, ] may be barred from offering [ any ] testimony or introducing [ any ] evidence that is inconsistent with or [ which ] goes beyond the fair scope of the information set forth in the pre-trial statement.

(e) An order [ distributing property under ] entered by the court pursuant to Section 3502 of the Divorce Code may be enforced as provided by the rules governing actions for support and divorce[ , ] and in the Divorce Code.

#### Explanatory Comment—1994

23 Pa.C.S. § 3105(a) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement on an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although Rule 1920.33 refers only to enforcement of orders, it also applies to enforcement of agreements.

[Pa.B. Doc. No. 16-1057. Filed for public inspection June 24, 2016, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 4 AND 10 ]

**Order Amending Rules 408, 413, 423, 452, 455 and 1031 of the Rules of Criminal Procedure; No. 474 Criminal Procedural Rules Doc.**

## Order

### *Per Curiam*

*And Now*, this 10th day of June, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 1846 (April 11, 2015), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 110), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pennsylvania Rules of Criminal Procedure 408, 413, 423, 452, 455, and 1031 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective August 1, 2016.

## Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART B(1). Procedures When Citation Is Issued to Defendant

#### Rule 408. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine [ **and** ], costs, **and restitution**, and the defendant shall have the right to appeal within [ **thirty** ] 30 days for a trial *de novo*.

## Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks

deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

**Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.**

**Official Note:** Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; **amended June 10, 2016, effective August 1, 2016.**

### *Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

**Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).**

### PART B(2). Procedures When Citation Filed

#### Rule 413. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine [ **and** ], costs, **and restitution**, and the defendant shall have the right to appeal within [ **thirty** ] 30 days for a trial *de novo*.

### Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. *See* Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

**Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.**

**Official Note:** Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; **amended June 10, 2016, effective August 1, 2016.**

#### *Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. (February 16, 1991).

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

**Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).**

### PART C. Procedures in Summary Cases When Complaint Filed

#### Rule 423. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the affiant of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine [ and ], costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

### Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. *See* Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

**Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.**

**Official Note:** Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; **amended June 10, 2016, effective August 1, 2016.**

#### *Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

**Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).**

### PART E. General Procedures in Summary Cases

#### Rule 452. Collateral.

\* \* \* \* \*

(G) The collateral deposited may be forfeited after conviction at the summary trial and applied to payment of the fine [ and ], costs, and restitution.

### Comment

The term "collateral" is intended to convey the dual purpose of the amount of money that is deposited. First, the amount deposited is used as bail to secure the defendant's appearance at the summary trial. Second, the amount deposited is used as security, and may be forfeited in the event of a conviction to satisfy any fine [ and ], costs, and restitution.

A defendant may not be penalized or denied a hearing because he or she cannot pay the full amount of the fine and costs as collateral.

For the purpose of paragraph (F), any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 (1959) would constitute a “cash equivalent.”

**Paragraph (G) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.**

**Official Note:** Rule 81 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised May 14, 1999, effective July 1, 1999; renumbered Rule 452 and Comment revised March 1, 2000, effective April 1, 2001; amended April 10, 2015, effective July 10, 2015; **amended June 10, 2016, effective August 1, 2016.**

*Committee Explanatory Reports:*

Final Report explaining the May 14, 1999 Comment revisions published with the Court’s Order at 29 Pa.B. 2775 (May 29, 1999).

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

Final Report explaining the April 10, 2015 amendment concerning the setting of collateral published with the Court’s Order at 45 Pa.B. 2045 (April 25, 2015).

**Final Report explaining the June 10, 2016 addition of “restitution” to the list of items for which collateral may be forfeited after conviction published with the Court’s Order at 46 Pa.B. 3238 (June 25, 2016).**

**Rule 455. Trial in Defendant’s Absence.**

\* \* \* \* \*

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine [ **and** ], costs, **and restitution**. When the amount of collateral deposited is more than the fine [ **and** ], costs, **and restitution**, the balance shall be returned to the defendant.

(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant’s arrest.

**Comment**

\* \* \* \* \*

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

**Paragraph (E) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.**

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

**Official Note:** Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; Comment revised January 17, 2013, effective May 1, 2013; Comment revised July 17, 2013, effective August 17, 2013 ; Comment revised March 9, 2016, effective July 1, 2016; **amended June 10, 2016, effective August 1, 2016.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 9, 2016 Comment revision cross-referencing the sentencing provisions in Rule 454(F) published with the Court’s Order at 46 Pa.B. 1540 (March 26, 2016).

**Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court’s Order at 46 Pa.B. 3238 (June 25, 2016).**

**CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA MUNICIPAL COURT TRAFFIC DIVISION**

**PART B. Philadelphia Municipal Court Traffic Division Procedures**

**Rule 1031. Institution of Proceedings in Summary Traffic Cases.**

(A) Summary traffic cases in Philadelphia shall be instituted by:

- (1) issuing a citation to the defendant as provided in Rules 405—409;
- (2) filing a citation with the Philadelphia Municipal Court Traffic Division as provided in Rules 410—414; or
- (3) arresting without a warrant when arrest is specifically authorized by law as provided in Rules 440 and 441.

(B) When provided by local rule as an exception to the trial notice procedures in Rule 408(B), the law enforcement officer also shall give the defendant written notice of the date and time and location set for the summary trial when a citation is issued to the defendant as provided in Rule 405.

(1) The trial notice shall include an explanation that if the defendant enters a guilty plea and pays the fine and costs indicated on the citation within the specified time, the summary trial will be cancelled.

(2) The trial notice also shall include notice to the defendant that:

(a) failure to appear for the trial shall constitute consent for the trial to be conducted in the defendant’s absence;

(b) if the defendant is found guilty, the collateral deposited will be forfeited and applied [ **toward the fine and costs** ] to payment of the fine, costs, and restitution; and

(c) the defendant will have the right to appeal within 30 days for a trial *de novo* in the court of common pleas.

### Comment

See Rule 403 for the contents of the citation.

The trial notice permitted in paragraph (B) may be added to the citation form.

**Paragraph (B)(2)(b) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority.**

See Rule 105 for the procedures for promulgating local rules.

**Official Note:** Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately; **amended June 10, 2016, effective August 1, 2016.**

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

**Final Report explaining the June 10, 2016 addition of "restitution" to the list of items for which collateral may be forfeited after conviction published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016)**

### FINAL REPORT<sup>1</sup>

#### *Amendments to Pa.Rs.Crim.P. 408, 413, 423, 452, 455, and 1031*

#### **Restitution and Forfeited Collateral in Summary Cases**

On June 15, 2016, effective August 1, 2016, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 408 (Not Guilty Pleas—Notice of Trial), 413 (Not Guilty Pleas—Notice of Trial), 423 (Not Guilty Pleas—Notice of Trial), 452 (Collateral), 455 (Trial in Defendant's Absence), and 1031 (Institution of Proceedings in Summary Traffic Cases) to clarify that restitution is one of the types of assessments for which collateral may be forfeited after conviction in a summary case.

Retention of summary case collateral has long been permitted under Rule 452(G) which states, "The collateral deposited may be forfeited after conviction at the summary trial and applied to payment of the fine and costs." The Minor Judiciary Education Board asked the Committee to consider whether collateral that had been previously set could be similarly applied to pay restitution awarded in summary cases. This question was prompted by the Court's recent adoption of amendments to Rule 528 (Monetary Condition for Release of Bail) and Rule 535 (Receipt for Deposit; Return of Deposit) that provided procedures in court cases for applying bail that would be otherwise returnable to case assessments including restitution. The Board suggested the Committee consider an amendment to Rule 452 to include specific mention of restitution.

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

The language regarding forfeiture of collateral has been in Rule 452 (originally Rule 81) since it first was adopted in 1985. It appears that this provision developed in consideration of the traditional summary citation case, usually involving traffic offenses, where the defendant is permitted to post collateral for a fixed fine and costs while awaiting the summary trial. This collateral then could be applied to the fine and costs if the defendant failed to appear or could be applied directly if the defendant were convicted. In these types of cases, restitution was rarely awarded. However, in developing the rule, the Committee did not appear to have considered other summary cases, such as non-traffic offenses, where there is no fixed fine and where restitution can be a factor in the potential sentence.

Additionally, at the time, there was a question among some issuing authorities of their power to impose restitution as part of a summary sentence. Certainly, if there was previously a question on the authority of MDJs to award restitution, that has been addressed statutorily in paragraph (d) of Section 1106 of Title 18, the general restitution provision. Furthermore, the summary case rules contain numerous references to the award of restitution in summary cases. For example, Rule 403 (Contents of Citation), while not requiring restitution to be listed on the citation, contains Comment language making passing reference to the award of restitution as part of a summary sentence. Similarly, Rule 462 (Trial *De Novo*) references restitution as part of the sentence. Furthermore, the collection of restitution by magisterial district judges in summary cases appears to have been a long-standing practice, particularly in non-traffic summaries such as criminal mischief, bad checks, retail theft and other crimes where there may have been loss of property or damages. In addition, the Magisterial District Justice System (MDJS) currently permits collateral in summary cases to be used to offset restitution.

The allowance under Rule 452(G) that collateral may be forfeited to be applied to case assessments was, until recently, one of the major differences between summary collateral and court case bail. As noted in the Comment to Rule 452, collateral has a dual purpose as bail to secure the defendant's appearance at the summary trial, and as security for the payment of fines and costs. With the Court's recent approval of the changes to Rules 528 and 535, that permits returnable bail money to be retained to pay case assessments, that distinction has become less pronounced.

The Committee therefore concluded that there is not a compelling reason why collateral should not be used to satisfy restitution. Furthermore, it is inconsistent to permit the application of bail money to restitution in court cases but not collateral for restitution in summary cases. This is especially compelling in light of the Court's recent adoption of Rule 705.1 and associated correlative rule changes designed to enhance the collection of restitution in court cases.<sup>2</sup> Finally, the amendment to Rule 452(G) codifies current practice.

The Committee considered whether the amendments should include procedures similar to those contained in the amendments to Rules 528 and 535 for the retention of bail, such as requiring a motion by the attorney for the Commonwealth. The Committee concluded that, given the relatively small amount of money set for collateral in summary cases which is limited under Rule 452(A) to the full amount of fines and costs, incorporating such exten-

<sup>2</sup> See 46 Pa.B. 1532 (March 26, 2016).



sive procedures would needlessly complicate a process currently being accomplished without reported problem.

As a result of post-submission comments from the Court, the Committee considered the advisability of making changes to Rules 408, 413, 423, and 455. Paragraph (B)(3) of Rules 408, 413, and 423 provide for several notices to be given to a defendant in response to a not guilty plea being entered. In addition to notice of when the summary trial will take place, the defendant is advised that the collateral will be forfeited if he or she fails to appear for the trial. Restitution usually would not be calculated when setting the collateral because that would usually occur at sentencing. However, there is a potential in some cases in which the defendant is tried *in absentia* and restitution awarded as part of the sentence. Then a court could have the collateral forfeited which could then be applied to the restitution owed. Therefore, the Committee concluded that inclusion of restitution in the notice would avoid any possible confusion. Accordingly, changes similar to those made to Rule 452 have been made to these three rules.

During the development of these rule changes, the Committee discovered that Paragraph (B)(3) of Rule 423 contained a typographical error in that it failed to state the number of days that a defendant has in which to file an appeal for a trial *de novo*. It appears that this error occurred during the renumbering of the rules in 2000. As part of those amendments, when numbers were contained in the rules, they were converted from text to Arabic numerals. It appears that the term "thirty" was removed from Rule 423(B)(3) but that the numeral "30" had not been added. Also, the term "thirty" in the identical paragraphs in Rules 408 and 413 had not been converted to the numeral "30." This technical correction has been made to all three of these rules.

Rule 455(E)<sup>3</sup> describes the handling of collateral following a trial *in absentia* including the distribution of forfeited collateral. As the language of this paragraph mirrors Rule 452(B), the Committee determined that the language of the rules should be consistent. Therefore, amendments comparable to the changes to Rule 452(B) have been made to Rule 455(E).

The Committee also considered a similar change to Rule 1031(B)(2)(b) that governs the institution of summary traffic cases in the Philadelphia Municipal Court Traffic Division. Although currently restitution sentences are not being awarded in these cases, the Committee considered whether the changes should be included for consistency. Committee members consulted with representatives of the Traffic Division who indicated that while sentences of restitution are not currently issued in traffic cases, they did not want to preclude the possibility of using forfeited collateral for any such awards should they be used in the future. It should be noted that, while 18 Pa.C.S. § 1106 does not specifically provide for restitution in traffic cases, there are several provisions of the Motor Vehicle Code that permits restitution to be awarded for certain cases. *See, e.g.*, 75 Pa.C.S. § 6126. Therefore, amendments similar to the other rules have been made to Rule 1031.

[Pa.B. Doc. No. 16-1058. Filed for public inspection June 24, 2016, 9:00 a.m.]

<sup>3</sup> The text of Rule 455 included in this rule change package reflects the changes that were approved by the Court on March 9, 2016 and will become effective July 1, 2016. *See* 46 Pa.B. 1532 (March 26, 2016).

# Title 25—LOCAL COURT RULES

## ADAMS COUNTY

### Rules of Judicial Administration; Administrative Order No. 5 of 2016

#### Order of Court

*And Now*, this 9th day of June, 2016, *It Is Hereby Ordered* that the following rule be added to the Adams County Rules of Judicial Administration:

#### 325. Exhibits Generally.

A. When the Clerk of Courts or Prothonotary is serving the Court and present during a judicial proceeding and an attorney or party needs to have an exhibit entered into evidence:

1. The Clerk of Courts or Prothonotary shall be responsible for marking the exhibit.
2. For criminal matters, the Clerk of Courts shall be responsible for maintaining an exhibit sheet.
3. When the proceeding has adjourned, the Clerk of Courts or Prothonotary shall be responsible for taking and maintaining possession of all exhibits that have been admitted into evidence;

a. Placement of the document exhibits in the appropriate file;

b. If there are other physical exhibits (weapons, instruments of crime/fraud, etc.), the Sheriff's Office will provide the Clerk of Courts or Prothonotary with an escort to the filing office.

4. Court Reporters shall be responsible for providing blank exhibit tags to the Clerk of Courts or Prothonotary.

B. If neither the Clerk of Courts nor Prothonotary is serving the Court and present during a judicial proceeding and an attorney or party needs to have an exhibit entered into evidence:

1. The Court Reporter shall be responsible for marking exhibits;

2. For criminal matters, the Court Reporter shall be responsible for maintaining an exhibit sheet to be filed with the Clerk of Courts.

3. When the proceeding for which neither the Clerk of Courts nor Prothonotary were present has concluded for the day:

a. The Tipstaff in charge of the courtroom shall be responsible for:

- i. Gathering all exhibits;
- ii. For criminal matters, gathering the exhibit sheet from the Court Reporter;
- iii. If applicable, verifying that the exhibits match the items listed on the sheet;

iv. Returning the exhibits and exhibit sheet, if applicable, to the appropriate filing office, who shall verify receipt of all exhibits upon acceptance.

b. The Sheriff in charge of the courtroom shall be responsible to escort the Tipstaff to the filing office if there are other physical exhibits (weapons, instruments of crime/fraud, illegal substances, etc.).

4. If the court proceeding ends for the day after the closing of a filing office, the Chief Tipstaff or designee shall ensure the securing of all exhibits in a locked area that is only accessible to the Chief Tipstaff or designee.

a. If the court proceeding resumes the next business day, the Chief Tipstaff or designee shall return the exhibits to the courtroom unless otherwise instructed by the presiding Judge.

b. If the court proceeding has concluded, the Chief Tipstaff or designee shall return the exhibits to the appropriate filing office at the beginning of the next business day, to be escorted by the Sheriff's Office if there are other physical exhibits (weapons, instruments of crime/fraud, illegal substances, etc.).

C. In the event the Court takes a matter under advisement and needs to maintain the exhibits, the Tipstaff in charge of the courtroom shall:

1. Gather the exhibits;
2. For criminal matters, gather the exhibit sheet from the Court Reporter;
3. Secure the exhibits in a locked area that is only accessible to the Chief Tipstaff or designee and to allow them to be removed when the presiding Judge requests to examine them, and to re-secure them when the presiding Judge is no longer needs them;
4. When instructed by the presiding Judge, return the exhibits to the appropriate filing office, to be escorted by the Sheriff's Office if there are other physical exhibits (weapons, instruments of crime/fraud, illegal substances, etc.).

D. The handling of exhibits as described in this Rule only applies to exhibits that have been admitted by the Court. Any exhibits introduced but not admitted by the Court shall be the responsibility of the party that introduced the exhibit.

This rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. *It Is Further Directed that:*

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

B. One (1) certified copy of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts for distribution in accordance with the provisions of Pa.R.J.A. 103(c)(5); and

C. Two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b), or other compliant format per 1 Pa. Code § 13.11(d), containing the text of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

*By the Court*

MICHAEL A. GEORGE,  
*President Judge*

[Pa.B. Doc. No. 16-1059. Filed for public inspection June 24, 2016, 9:00 a.m.]

## CUMBERLAND COUNTY Local Rule 456; 96-1335 Civil

### Order

*And Now* this 16th day of May, 2016, effective June 1, 2016, or thirty (30) days after publication in the *Pennsylvania Bulletin*, whichever is later, the following Cumberland County Summary Warrant Policy/Procedure is herewith made a Local Rule of Court to be known and numbered as Cumberland County Local Rule 456.

Pursuant to Pa.R.Crim.P. 105, the Court Administrator is directed to distribute two certified paper copies of the Local Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The Court Administrator shall also distribute to the Legislative Reference Bureau a copy of the Local Rule on a computer diskette or on a CD-ROM, that complies with the requirement of 1 Pa. Code § 13.11(b). It is further directed that the Court Administrator file one certified copy of the Local Rule with the Administrative Office of Pennsylvania Courts and forward a copy of the Local Rule for the purpose of publication on the Unified Judicial System's website at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

*By the Court*

EDWARD E. GUIDO,  
*President Judge*

### Cumberland County Summary Warrant Policy/ Procedure:

1. Central Booking is available during defined time periods to hold defendants with summary warrants that police encounter during their normal course of duty or constables executing warrants issued to them directly by a Magisterial District Judge.

2. *Defined hours:* Sunday through Thursday during non-court hours. Central Booking will not accept defendants with summary warrants on Friday, Saturday, and County holidays. At any time during the defined hours that Central Booking may experience full capacity, police and/or constables will be informed of a temporary suspension of acceptance of Summary Warrant defendants over the 911 Police Radio System.

3. This policy does not pertain to juvenile defendants with summary warrants. Juvenile defendants with summary warrants will not be accepted at Central Booking.

4. In the event that Central Booking is able to ascertain that the defendant has medical issues that put them at risk during holding, Central Booking will issue a Payment Determination Hearing Notice and release the defendant. An officer or constable serving a summary warrant should ask the defendant if they require life-sustaining medication over the period of time until the defendant might be released (the next day) and attempt to obtain that medicine for the defendant.

5. If the defendant suffers a medical episode while in Central Booking, the defendant will be released to EMS.

6. Central Booking will complete an Intake form on each defendant brought in on a summary warrant so that updated contact information is collected.

#### 7. Warrant Procedures:

##### a. Summary Warrants for Non-Payment:

• Per this policy, warrants not issued to a constable for service by an MDJ should be verified on AOPC <https://ujportal.pacourts.us/>.

- For verified active warrants, the defendant's case attached to the warrant can be located at <https://ujportal.pacourts.us/> by accessing ePay. You will need the defendant's first name, last name, and DOB. Select MDJ cases and the case associated with the warrant.

- The defendant must pay the amount necessary to bring the payment plan on the warrant's case up to date. If the delinquent payment amount cannot be made in full at the time of service, the defendant may be transported to Central Booking.

- *For constables:* A Fee bill must be attached to the warrant paperwork at Central Booking in order to facilitate proper addition of fees to the defendant's case. Central Booking will forward the Fee bill to the Magisterial District Judge for review and assessment.

- The defendant will be held at Central Booking until either a). A release amount as defined in this policy can be paid, or b). the issuing Magisterial District Judge is informed and makes a determination of action.

- *Release Policy:* The Central Booking Center will release defendants immediately when the following release amounts are met:

- The release amount will be based on the delinquent payment amount as determined through AOPC's ePay system. If the full amount of the delinquent payment plan is under \$200, delinquent payment amount must be paid in full.

- If the full amount of the delinquent payment plan is \$200 or over, the minimum amount of \$200 or 50% of the total, whichever is greater, must be paid.

- If the defendant has multiple summary warrants, the total of all warrants delinquent payment plans will determine the release amount. If the total of all of the amounts owed on all cases exceeds \$1000.00, the defendant must pay a minimum of \$500. That amount should be put towards the oldest case first, next oldest, etc.

- A chart of release amounts is attached to this policy.

- If the release amount is met, but bringing the payment plan into current status is not equal to the full amount owed on the warrant, the defendant will be given a Payment Determination Hearing Notice scheduling such hearing on a weekday and time selected by each Magisterial District Judge for their cases. This date shall be not less than 2 weeks following release (providing at least 10 days notice per Rule 456).

- Central Booking will email a copy of the receipt and the hearing notice, if applicable, to the Magisterial District Judge to notify them of the payment and release. The Magisterial District Judge shall clear the warrant.

- If the defendant is not able to make the release amount, Central Booking may still collect a lesser amount towards the summary warrant total. The defendant will be held until court hours the next morning and the issuing Magisterial District Judge is informed and makes a determination of action.

- No defendant shall be committed without following the steps outlined in Title 42 Pa.C.S. 4137 for sections (a3) and (a4). After issuance of a warrant, bail and a contempt hearing shall be set. If imprisonment is a possibility, hearings should be set on Public Defender day. For District Courts that regularly schedule hearings in only the morning or afternoon on PD day, select a time that corresponds with the Public Defender's normal schedule (am or pm).

#### b. Summary Warrants for Failure to Respond:

- Per this policy, warrants not issued to a constable for service by an MDJ should be verified on AOPC <https://ujportal.pacourts.us/>.

- Pursuant to Rule 431, the police officer or constable serving the warrant shall:

- 1) Accept a signed guilty plea and the full amount of fines and costs if stated on the warrant;

- 2) Accept a signed not guilty plea and the full amount of the collateral on the warrant if stated on the warrant; or

- 3) If the defendant is unable to pay the full amount of fines and costs or the defendant is unable to pay the collateral, transport the defendant to Central Booking.

- Signed plea paperwork shall be forwarded to the MDJ office. The Magisterial District Judge shall clear the warrant.

- *For constables:* A Fee bill must be attached to the warrant paperwork at Central Booking in order to facilitate proper addition of fees to the defendant's case. Central Booking will forward the Fee bill to the Magisterial District Judge for review and assessment.

- *Release Policy:* The Central Booking Center will release defendants immediately when the following release amounts are met:

- 1) For a guilty plea, the release amount will be based on the total amount of fines and costs if stated on the warrant. If the full amount of the fines and costs is under \$200, the amount must be paid in full.

- 2) If the full amount of the fines and costs is \$200 or over, the minimum amount of \$200 or 50% of the total, whichever is greater, must be paid.

- 3) If the defendant has multiple summary warrants for Failure to Respond, the total of all warrants' fines and costs will determine the release amount. If the total of all of the amounts owed on all cases exceeds \$1000.00, the defendant must pay a minimum of \$500. That amount should be put towards the oldest case first, next oldest, etc.

- 4) If the release amount is met, but the full amount of fines and costs is not paid, the defendant will be given a Payment Determination Hearing Notice for a date and time selected by each Magisterial District Judge for their cases for the following week.

- 5) For not guilty pleas, 100% of the collateral, if stated on the warrant, must be paid.

- If a defendant has summary warrants for Failure to Pay and Failure to Respond, apply the appropriate policy to each type, separately.

- Central Booking will email a copy of the signed receipt, signed plea paperwork, and any hearing notices to the Magisterial District Judge to notify them of the payment and release. The Magisterial District Judge shall clear the warrant.

- If the defendant cannot meet the release amount or the collateral, the Magisterial District Judge shall conduct a bench warrant hearing. If the Magisterial District Judge is unavailable, please refer to c. (Release without payment).

- *c. Release without payment:* Central Booking will email the Magisterial District Office that a defendant is being held on a summary warrant. If the Magisterial District Office has not contacted Central Booking regarding hold-

ing a bench warrant hearing for the defendant by noon the following day, the defendant will be released with a Payment Determination Hearing Notice scheduling such hearing on a weekday and time selected by each Magisterial District Judge for their cases. This date shall be not less than 2 weeks following release (providing at least 10 days notice per Rule 456).

d. *Collection of Money:*

- Warrants must clearly establish the total amount owed or collateral amount. If a Failure to Respond Warrant has no fines and costs or collateral listed, you should accept the guilty plea or not guilty plea without payment and forward to the Magisterial District Judge per the policy below (“Upon facilitating payment” and “When a warrant is served and payment is facilitated”). The amount paid shall be “warrant satisfied.”

- Each Police Department may determine if they will facilitate the monetary satisfaction of the warrant as described below. If a department does not want to participate in the payment process, the defendants may be transported to Central Booking.

- *For Failure to Pay:* Police or Constables serving a warrant and facilitating collection may assist the defendant to make a payment through AOPC’s ePay (<https://ujportal.pacourts.us/>).

- *For Failure to Respond:* Police or constables serving a warrant and facilitating collection may assist the defendant to make a payment through the Valu Payment System.

- Upon facilitating payment, the defendant should be given a copy of the warrant as a receipt with the following information:

- 1) Amount Paid
- 2) Date
- 3) Officer/Constable Name and Signature
- 4) Identifying Badge #/Constable Id
- 5) Signature of Defendant

- When a warrant is served and payment is facilitated by an officer or a constable, the issuing MDJ Office must be informed by the police officer or constable via email that the warrant has been served, and the amount paid, so that the warrant can be cleared from the system. The Magisterial District Judge shall clear the warrant. A copy of the receipt must be forwarded to the Magisterial District Judge.

- At Central Booking, defendants will be allowed to use the phone to make calls to obtain payments.

- Central Booking will utilize ePay and Official payments as detailed above.

- Cash payments collected at Central Booking will be received per booking policy and payments will be submitted to Magisterial District Court 09-2-02 for processing.

- Magisterial District Court 09-2-02 shall enter the information as a new case and provide a refund to the originating MDJ’s office.

- 1) Enter district court number 09-2-02. Click on Payment Icon that says “Receipt by Responsible Participant.”

- 2) The “Responsible Participant” entered is the Court receiving the payment.

- 3) It will then say that there is no balance due.

- 4) Click “Add” and a new screen appears.

- 5) In “Assessment Category” choose “Escrow”

- 6) For “Assessment Type” choose “Night Court Payment”

- 7) For “Assessment Amount” type in the amount collected

- 8) There is a place for docket number, which is the case that had the warrant.

- 9) In the comments, we would put “Warrant served for \_\_\_\_\_ defendant. \_\_\_\_\_ amount collected.”

e. Procedure for Central Booking when a defendant comes in with a Fingerprint Order and is found to have a summary warrant:

- If the defendant is currently housed in another institution, Central Booking will notify the Magisterial District Judge by faxing a copy of the warrant with the name of the institution on it.

- If the defendant comes in during business hours on a Fingerprint Order or on a View Arrest and they have a Summary Warrant:

- 1) If the defendant has the cash or the ability to pay via a credit card, Central Booking will collect the payment.

- 2) If the defendant does not have the ability to pay, Central Booking will contact the Constable for that MDJ and request that they pick the defendant up and take him to the MDJ’s Office. If the Constable is not available, Central Booking will issue a Payment Determination Hearing Notice.

- 3) If the defendant enters Central Booking and he or she has children in the car, Central Booking will attempt to collect payment as detailed above, but will issue a Payment Determination Hearing Notice if the defendant is unable to pay.

f. Procedure for Cumberland County Prison when a defendant is incarcerated on another matter and has summary warrants:

- Apply the policy for both types of warrants as detailed above by attempting to collect the release amount.

- If the release amount is met, notify the Magisterial District Judge to cancel the warrant and provide the defendant with a receipt copy of the warrant and a Payment Determination Hearing upon release.

- If the release amount cannot be met, Cumberland County Prison will notify the Magisterial District Judge that the defendant has been issued a Payment Determination Hearing Notice upon release, provide the defendant with a receipt copy of the warrant upon release documenting “Payment Determination Hearing Notice has been served, date of release, and correction officer signature.” The Magisterial District Judge will cancel the warrant.

[Pa.B. Doc. No. 16-1060. Filed for public inspection June 24, 2016, 9:00 a.m.]

## JUNIATA COUNTY

**Repeal and Adoption of Rules of Orphans' Court Procedure; No. 201601972****Order**

*And Now*, May 31, 2016, it is hereby ordered and decreed that all Juniata County Rules of Orphans' Court Procedure filed prior to September 1, 2016 are repealed effective the date that the rules herein become effective. The Court hereby adopts the following Perry/Juniata County Rules of Orphans' Court Procedure to be effective as follows:

(1) All following local rules shall be effective September 1, 2016. It is further ordered that the District Court Administrator shall file:

(a) seven (7) certified copies of the Local Rules with Administrative Office of Pennsylvania Courts;

(b) two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) one (1) certified copy to the Civil Procedural Rules Committee, and the Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary and upon request and payment of reasonable costs of reproduction and/or mailing the Prothonotary shall furnish to any person a copy of the requested Local Rules.

*By the Court*

KATHY A. MORROW,  
*President Judge*

**Local Rules of Orphans' Court Procedure****Rule 1. Judges Local Rules.****Rule 1.1-1. Citation of Rules.**

These rules shall be known as the Rules of the Court of Common Pleas of Perry and Juniata Counties, Orphans' Court Division, adopted pursuant to PA O.C. Rule 1.5.

**Rule 1.2-1. Certificates of Appointment of Fiduciary.**

The Clerk of the Orphans' Court Division shall not issue a certificate of the appointment of any fiduciary until the security, if required by the Court, has been entered.

**Rule 1.2-2. Corporate Sureties. Approval.**

Surety companies authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in the Court; provided that a current certificate of the right to do business, issued by the Insurance Department of this Commonwealth; shall be on file with the Clerk of the Orphans' Court, and provided, further, that no bond shall be executed by any surety company after May of any year, until such certificate, issued after March 31 of that year, shall have been on file with the Court.

**Rule 1.6. Orphans' Court Mediation Program.**

(a) Cases filed in the Orphans' Court division may be ordered into the Orphans' Court Mediation Program by the Judge to whom the case is assigned, or by request of any of the parties by filing a Request for a Court Appointed Mediator. Upon filing a request for a Court appointed mediator, the Judge to whom the case is assigned, shall appoint said mediator.

(b) The mediators shall be practicing attorneys that are members of the Perry County Bar Association and/or the

Juniata County Bar Association with an emphasis in their practice on Orphans' Court matters. A list of mediators shall be maintained by the District Court Administrator, and selected by the Court from said list.

(c) Upon appointment, the mediator shall schedule the mediation within forty five (45) days of the order of Court. The attendance of legal counsel, the parties and a representative, including an insurance carrier, with authority to enter into a full and complete compromise and settlement is mandatory, if applicable. If lead counsel, the parties or a representative fail to appear after having been properly notified, absent good cause, the mediation will be held as schedule.

(d) At least ten (10) days prior to the mediation, each party shall file and serve on the other party a mediation statement which must include the following: (1) a succinct explanation of the facts and relief sought; (2) significant legal issues that remain unsolved; (3) summary of medical and expert reports (if applicable); (4) itemized list of damages; and (5) settlement posture and rationale. Failure to file a mediation statement may result in sanctions if requested by the mediator.

(e) Each party to the case selected for mediation shall pay a mediation fee to be made payable to the Clerk of the Orphans' Court and submitted to the Clerk of the Orphans' Court. The mediation fee shall be set by administrative order, and information with regard to the fee shall be available from the Clerk of the Orphans' Court.

(f) If the case has not been resolved, within fourteen (14) days from the date of the mediation, the mediator shall send a report setting forth the mediator's assessment of the case and the mediator's recommendation regarding settlement. A copy of the report shall be provided to and maintained by the District Court Administrator until the case is closed.

(g) If the case is resolved and a settlement agreed upon, the mediator shall send a letter to the Judge, with copies to counsel and the District Court Administrator.

(h) The mediator shall not be subpoenaed or requested to testify or produce documents by any party in any pending or subsequent litigation arising out of the same or similar matter. Any party, person, or entity that attempts to compel such testimony or production shall be liable and indemnify the mediator and other protected participants for all reasonable costs, fees and expenses. The mediator shall have the same limited immunity as judges pursuant to the applicable law as it relates to Common Pleas Judges. Notwithstanding the preceding subsections the court may in its discretion set a case for an alternative dispute resolution ("ADR") before a private mediator. The method of selection of the private mediator shall be in the discretion of the Court. All parties shall bear equally the costs of any Court-ordered private mediation; provided, however, that the Court shall take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

**1.6-1. Forms.**

Attached to these rules, is the form to be used for the Request for a Court Appointed Mediator in Orphans' Court matters.

**Rule 5.10(b). Public Sale of Real Property.**

(a) After allowance of public sale of real property, the petitioner shall, in addition to such notice as required by law, give notice of the sale to each party in interest. The notice may be given by first class mail and must be given

at least twenty (20) day prior to the date of the proposed sale. In addition, notice of the sale must be published at least one time in a newspaper of general circulation in the county where the real property is located.

(b) The published public notice of the sale shall contain the following information:

(i) the address of the property and the municipality in which it is located;

(ii) the area of the property in terms of acres or square feet;

(iii) a list of the improvements of the property, if one is available;

(iv) a deed or survey description of the property, if one is available

(v) the name of the grantee of the last recorded deed for the property, together with the deed/record book or instrument number.

**Rule 5.16-1. Procedure under § 3102.**

Probate, Estates and Fiduciaries Code of 1972.

(a) *Contents of Petition.* A Petition under section 3102 of the Probates, Estates and Fiduciaries Code of 1972 (20 P.S. Section 3102), for the settlement of a small estate shall set forth

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

(2) the name and address of the petitioner, his relationship to the decedent and whether or not he formed a part of the decedent's household at the date of his death;

(3) if petitioner be the surviving spouse, the date and place of the ceremonial marriage, and the name and official capacity of the person who performed the ceremony; or, in the case of a common law marriage, all averments necessary to establish the validity of such marriage;

(4) whether the decedent died testate or intestate; where, when and to whom letters were granted, and the amount of bond given by the personal representative;

(5) the names, relationships and a brief description of the interest of all persons entitled to share in the decedent's estate under the will or intestate laws, stating which are minors, incompetents or deceased, with the names of their fiduciaries, and whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the Probate, Estates and Fiduciaries Code (20 P.S. Section 3101) or otherwise;

(6) the person entitled to the family exemption, and the facts on which the claim is based;

(7) an itemized statement of the property of the decedent and an appraisal thereof;

(8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;

(9) the names and all unpaid claimants of whom the petitioner has notice or knowledge; the nature and amount of each claim; and whether such claims are admitted;

(10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register; the amount of any inheritance tax assessed; and the date of payment thereof;

(11) that ten days' written notice of intention to present the petition has been given to every unpaid beneficiary,

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

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

(b) *Exhibits.* The following exhibits will be attached to the petition;

(1) a copy of decedent's will;

(2) consents of the surety, and of unpaid beneficiaries, heirs and claimants who consent thereto;

(3) a copy of the notice given; and

(4) the inheritance tax voucher, or in lieu therefore a statement from the Pennsylvania Department of Revenue that no tax is due.

(c) *Appraisal.* No formal appraisal is required, unless ordered by the court.

**Rule 5-16-2. Procedures Under § 3546.**

Probate, Estate and Fiduciaries Code of 1972.

(a) *Contents of Petition.* A petition under section 3546 of the Probate, Estates and Fiduciaries Code of 1972 (20 P.S. Section 3546) for the determination of title shall set forth

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

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

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

(4) a description of the real property located within the Commonwealth, and the place, book and page and/or instrument number of recording of the last deed thereto.;

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

(6) the facts material to a determination of the title.

(b) *Exhibits.* The following exhibits shall be attached to the Petition:

(1) the notice which has been given to creditors, and parties in interest; if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and a

(2) a copy of the decedent's will.

**Rule 9.1. Notice of Hearings.**

Notice of the initial hearing shall be given by regular mail to the counsel of record for the Estate, counsel of record for the exceptant(s), each heir at the last known address, to each unpaid creditor and to the Department of Revenue, the Department of Human Services, or other agency of the Commonwealth of Pennsylvania, if such Department or agency has, according to the information of the Clerk, a claim against the estate to be audited. If a party is unrepresented, notice shall be mailed to the last known address of record.

To the extent possible, the auditor shall expedite the hearings, and any party in interest may apply to the Court for an order on the auditor to proceed and file a report or else give the reasons for the alleged delay, if there be an unreasonable delay.

**9.1.1. Pre-Hearing Conference.**

The auditor shall schedule a pre-hearing conference at which time the accountant or his attorney shall present to the auditor all written notices of claims of creditors, legatees, devisees, next of kin and others interested in the estate given the accountant and also a list of all other creditors of which he/she has any information and mention the claims of creditors he recommends for allowance.

**Rule 9.6. Notice of Filing Report.**

When the auditor has his report completed, he/she shall present it to the Court along with a proposed Decree Nisi for consideration by the Court. A copy of said report and the signed Decree Nisi shall be mailed via regular mail to all attorneys who appeared before him and all exceptants who appeared without attorneys.

**9.7. Confirmation of Report.**

When an auditor's report is presented to the Court, it will be confirmed nisi and filed. Exceptions to the Report must be filed within fifteen (15) days of the date of the Decree Nisi. When no exceptions to an auditor's report are filed within the said period, the Clerk of the Orphans' Court shall endorse the absolute confirmation on the report.

**9.8-1. Security for Expenses and Fees.**

The Estate and exceptant(s) shall each provide to the Auditor an estimate of the amount of time needed to present their case. Thereafter, the Auditor shall recommend to the Court an amount to be held in escrow by the Register of Wills. Said deposit shall be applied to the Auditor's bill of costs as submitted by the Auditor and approved by the Court.

If exceptions are filed to the Report prior to confirmation absolute or if an appeal is filed after the confirmation, the party filing the same must pay in full all outstanding auditor's fees and costs as set forth on the Auditor's bill of costs, regardless of the recommendation of the Auditor as to allocation of the payment. The Court may address the issue of auditor's fees and costs at the time of the disposition of the exceptions or appeal.

**10.1.-1. Certification of Record.**

(a) *Contents of Petition.* A Petition to fix a date for a hearing from a certification of record to the court from the Register shall be promptly presented to the court and shall set forth;

- (1) the nature of the proceedings before the Register;
- (2) the basis for the certification of record; and
- (3) the names and address of all parties in interest including those who have not been made parties to the record.

(b) *Certification by Register.* When the record has been certified by the Register, the petition required by subparagraph (a) shall be presented by the party who instituted the contest, or, in special circumstances, as the Court may direct.

(c) *Citation.* Upon allowance of the petition, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the matter upon which the certification is requested or based, as the case may be, should not be determined by the Court on a day certain therein indicated.

**10.4. Appeals for the Register of Wills.**

(a) *Contents of Petition.* When an appeal is taken from a judicial act of, or proceeding before, the Register, the appellant shall promptly present a petition to the Court, which shall set forth:

- (1) the nature of the proceeding before the Register;
- (2) the basis for the appeal; and
- (3) the names and address of all parties in interest, including those who have not been made parties to the record.

(b) *Citation.* If the petition sets forth a prima facie case, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside.

**10.4.1. Grant of Jury Trial.**

(a) On appeal from the Register, or in a proceeding removed from or certified by the Register, the Court in its discretion may impanel a jury at any stage of the proceedings and forthwith proceed with a jury trial.

(b) On appeal from the Register, or in a proceeding removed for or certified by the Register, the Court in its discretion may, either at the conclusion of all the evidence presented by proponents and contestants or before all such evidence has been produced, when it is satisfied that sufficient evident has been presented so as to warrant, grant a jury trial at a future date.

(c) If a jury trial is granted, as provided in subparagraph (a) or (b) hereof, the Court shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the court shall determine.

[Pa.B. Doc. No. 16-1061. Filed for public inspection June 24, 2016, 9:00 a.m.]

**LUZERNE COUNTY****Order Amending Rule of Civil Procedure 1301 (Arbitration); No. 5666 of 2016****Order**

*And Now*, this 23rd day of May, 2016, it is hereby *Ordered*, as follows:

1. Luzerne County Rule of Civil Procedure (Luz.Co.R.Civ.P.) 1301 et seq. is Rescinded, and new Luzerne County Rule of Civil Procedure (Luz.Co.R.Civ.P.) 1301, a copy of which follows, is hereby adopted as Luzerne County Rules of Civil Procedure (Luz.Co.R.Civ.P.) 1301—13, effective thirty (30) days after publication in the *Pennsylvania Bulletin* and on the Unified Judicial System Portal.

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

3. It is further Ordered that these local rules shall be kept continuously available for public inspection and copying in the Office of Judicial Services and Records of Luzerne County.

*By the Court*

RICHARD M. HUGHES, III,  
*President Judge*

**Rule 1301—Arbitration**

**Rule 1301. Cases Subject to Arbitration.**

(a) All civil actions, actions in replevin and actions upon mechanics' liens wherein the amount in controversy shall be \$50,000.00 or less shall first be submitted to and heard by a Board of Arbitrators pursuant to Pa.R.C.P. 1301 et seq.

(b) For purposes of determining the amount in controversy, every complaint or counterclaim in such civil actions, in replevin or upon a mechanics' lien, shall set forth a statement that the total amount of damages claimed in such pleading, exclusive of interest and costs, is \$50,000.00 or less or is more than \$50,000.00, or in replevin, that the value of the property claimed is \$50,000.00 or less or is more than \$50,000.00.

(c) The amount in controversy shall be determined from the complaint and/or counterclaim as required by Subsection (b) or by a Stipulated Agreement filed by the attorneys. The term "amount in controversy" shall be exclusive of interest and costs. The amount in controversy when determined from the pleadings shall be the largest amount claimed by any one party.

(d) The following types of actions shall not be subject to arbitration under this rule: mandamus, quo warranto, quiet title actions involving title to real estate, ejection, municipal claims, tax claims, mortgage foreclosure, and actions upon ground rents.

**Rule 1302. Certification for Arbitration.**

(a) When a case is ready in all respects, an attorney or a party may file a Certification for Arbitration with a time-stamped copy delivered to the Office of Court Administration. The form of the Certification for Arbitration shall be provided by these rules. At least 30 days prior to the filing of a Certification for Arbitration, an unrepresented party (pro se) or attorney must notify all other unrepresented (pro se) parties or attorneys of one's intention to file the Certification for Arbitration. All required information must be completed on the Certification for Arbitration. Failure to provide the required information will result in the Certification for Arbitration being rejected. All hearings shall be conducted at the Luzerne County Court House.

(b) In the event that there is a dispute between or amongst the parties as to whether or not a case is ripe for the filing of a Certification for Arbitration, any party may file a Petition and Rule Returnable for hearing on said issue which shall be made returnable for hearing in Miscellaneous Court in accordance with the normal scheduling process in regard to same. The Court shall then determine suitability for arbitration.

(c) The following form, or a form substantially similar, shall be used as the Certification for Arbitration:

(CAPTION)

**CERTIFICATION FOR ARBITRATION**

TO THE CLERK OF JUDICIAL RECORDS AND SERVICES (PROTHONOTARY) OF THE COURT OF COMMON PLEAS OF LUZERNE COUNTY:

The undersigned hereby certifies pursuant to Luzerne County Local Rule 1302 as follows:

1. The amount in controversy is \$50,000.00 or less;
2. The case is ripe in all respects to be heard by a Board of Arbitration;
3. At least thirty (30) days prior notice was given of the intention to file this Certification for Arbitration to all counsel who have entered their appearance and to all unrepresented parties; and,
4. No objection has been made to the appointment of a Board of Arbitration by any party.

The following information is submitted:

Plaintiff: _____	Defendant: _____
Attorney: _____	Attorney: _____
Address: _____	Address: _____
_____	_____
Telephone: _____	Telephone: _____
Facsimile: _____	Facsimile: _____
Email: _____	Email: _____

For any party unrepresented by legal counsel, or additional parties represented by legal counsel, the following is submitted:

Party: \_\_\_\_\_

Status: \_\_\_\_\_  
(Plaintiff, Defendant, Add'tl Defendant, etc.)

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

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_



RESPECTFULLY SUBMITTED:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name

**Rule 1303. Administration.**

(a) Proceedings under this rule shall be administered by the Office of Court Administration as directed by the District Court Administrator. Court Administration shall have the power to interpret these rules and prescribe forms subject to review by the Court.

(b) In order to be considered for appointment to the Board of Arbitrators, an attorney must:

1. be admitted to practice within the Commonwealth of Pennsylvania and be in good standing before the Supreme Court of Pennsylvania; and,
2. be actively engaged in the practice of law within Luzerne County; and,
3. maintain an office in Luzerne County; and,
4. file the required Arbitrator Registration Form with the Office of Court Administration.

(c) The Office of Court Administration shall promulgate an Arbitrator Registration Form to be completed in full by attorneys seeking appointment to Boards of Arbitration. In addition to general and contact information, the Arbitrator Registration Form shall state whether the attorney is practicing alone, is a member of a firm, or is associated in some way with one or more other attorneys, either in private practice, as an employee of a public office, such as District Attorney or Public Defender, legal aid, in-house legal counsel, etc. Any change of status must be promptly reported to Court Administration.

(d) Upon receipt of a fully completed certified Arbitrator Registration Form, the Court Administrator will add the name of the person submitting the form to the list of those eligible to serve as a member of an arbitration board. Boards of Arbitration will be appointed from the list of members of the bar who have filed such information. The Court Administrator shall have sole authority to determine whether an arbitrator is qualified under these rules.

(e) The following form, or a form substantially similar, shall be used as the Arbitrator Registration Form:

**REGISTRATION TO SERVE AS ARBITRATOR**

By completing and filing this Arbitrator's Registration form with the Office of Court Administration, I hereby certify my eligibility and request that I be placed upon the list of attorneys for appointment to a Board of Arbitrators. I certify that I am familiar with the Rules of Procedure governing Arbitration and Boards of Arbitrators and will at all times act in compliance with those rules.

The following information is submitted:

Name: \_\_\_\_\_  
Atty. I.D. No: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

I further hereby certify as follows:

1. I am admitted to the practice of law in the Commonwealth of Pennsylvania and am currently on active status with the Supreme Court of Pennsylvania;
2. I am actively engaged in the practice of law in Luzerne County and maintain a professional office within Luzerne County.
3. I maintain a solo legal practice, or maintain the following association with other attorneys:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I verify that the foregoing statements are true and correct

RESPECTFULLY SUBMITTED:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name

**Rule 1304. Selection of Arbitrators.**

Boards shall consist of three (3) members, one of whom shall serve as the chair. The chair shall be a member of the bar admitted to practice of law for at least three years. The chair of the Board of Arbitrators shall be appointed by the Court Administrator and shall be responsible for the preparation and filing of the Board's report and award. All other members of the Board of Arbitrators shall also be appointed by the Court Administrator. No more than one member of a family, firm association or other entity shall serve on an arbitration panel. The Court Administrator shall maintain a list of attorneys eligible to serve as arbitrators which shall be maintained in the Office of Court Administration and be available to the public for inspection.

An attorney may resign by letter addressed to the Court Administrator, whereupon the Court Administrator shall note the resignation and date thereof on the appropriate list or list behind the attorney's name.

The Court Administrator shall also note all deletions from the aforementioned lists whether by death, removal of principal office from Luzerne County, cessation of active practice before this court, suspension from practice or disbarment and the date thereof.

It is the professional obligation of all members of the bar who qualify under these Rules to serve on Boards of Arbitrators when scheduled, unless absent or excused for good cause and compelling reason. If an arbitrator fails to appear, or appears late for a scheduled arbitration hearing without compelling reasons, his or her name will be stricken from the arbitration list, and he or she will be so notified by the Court Administrator. He or she may be reinstated by application to the court, upon cause shown.

The President Judge may strike from the list of eligible arbitrators the name of any attorney who has consistently demonstrated an inability to serve with civility.

In the event that an arbitrator is unavailable to attend a scheduled hearing, he or she shall give prompt notice to the Office of Court Administration so that a substitute may be appointed. Repeated unavailability after appointment may result in the removal of the attorney from the eligible list of attorneys for appointment.

A member of a board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as arbitrator.

**Rule 1305. Striking of Case from Arbitration List or Trial List.**

The Court may, on its own motion or upon the motion of any party, strike any case from the trial list which should have first been arbitrated, or, strike any case from the arbitration list which the Court determines should be tried by a jury or by a judge without a jury. If a case is stricken from the trial list by the Court, counsel or an unrepresented (pro se) party shall file a Certification for Arbitration on the form approved by the Court, together with the appropriate filing fee.

If a case is stricken from the arbitration list, counsel or an unrepresented (pro se) party shall file a Certificate of Readiness for Trial immediately with the Clerk of Judicial Services and Records (Prothonotary) and serve copies of same upon counsel, unrepresented (pro se) parties and Court Administration.

**Rule 1306. Notice of Hearing.**

The Office of Judicial Services and Records (Prothonotary), under the direction of Court Administration, shall mail a copy of the Order scheduling the hearing date, time and place to each attorney of record and, in the event a party is not represented of record by an attorney, to such party at his or her last known address by first-class mail and file of record proof of service in each case. E-mail notice shall be allowed whenever permitted by rules of procedure.

a) The hearing shall be scheduled within 45 days of the filing of the Certificate for Arbitration.

b) The written notice of hearing shall contain the following statement:

**"NOTICE OF DUTY TO APPEAR AT ARBITRATION HEARING**

This matter will be heard by a Board of Arbitrators at the time, date and place specified, but, if one or more the parties is not present at the hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge."

**Rule 1307. Continuances.**

(a) More than seven (7) days prior to the hearing date, a case may be continued one (1) time by agreement of all counsel and unrepresented parties. The request for continuance must be in writing and presented to Court Administration. Court Administration shall reschedule the arbitration hearing to the next available date, but not more than sixty (60) days after the original date.

(b) Requests for continuance made less than seven (7) days before the scheduled hearing, or in instances when all parties and/or counsel do not concur in the request for continuance, shall, after notice to all parties, be presented to the Motions Judge for adjudication.

**Rule 1308. Hearing.**

1. All hearings shall commence promptly at the time scheduled.

2. Hearings shall be conducted by the Chairman with decorum in full compliance with judicial proceedings. Witnesses shall be sworn in the customary manner. Testimony shall be taken through the same procedures and decorum as used before the Court of Common Pleas. Testimony before a Board of Arbitrators is not transcribed unless by special request and at the expense of the requestor.

3. Boards of Arbitrators shall conduct hearings with due regard to the law and rules of evidence. Boards of Arbitrators shall have the general powers of the Court including administering oaths or affirmations, determining admissibility of evidence, permitting testimony to be offered by deposition and deciding the law and the facts of the case submitted.

**Rule 1309. Award.**

1. The Boards of Arbitrators shall file its findings and award, if any, as well as any written opinion (as in its discretion it may choose to submit), within three (3) business days from the conclusion of the hearing in each case. If a member of the panel dissents from the majority's findings or award, that arbitrator shall so state on the award form and may, in his or her discretion, submit an opinion indicating the reason(s) for such dissent.

2. The Report and Award shall be in the form set forth in Pa.R.C.P. 1312.

3. Arbitrators may not award punitive damages.

4. Arbitrators may award costs.

5. Arbitrators may award possession in Landlord/Tenant matters.

6. Arbitrators may award possession and monetary value of the property or special damages sustained in a replevin action.

7. Monetary awards shall not exceed the jurisdictional limit of \$50,000.00 exclusive of interest and costs.

8. Arbitrators may award delay damages when that issue is properly pending in the action.

**Rule 1310. Delay Damages.**

1. In all cases subject to the provisions of this Rule where damages for delay are claimed, the Plaintiff shall, no later than the commencement of the hearing, present to the Chairman of the Board of Arbitrators in a sealed envelope a statement containing the required information, which shall be substantially in the form contained in subsection 3 below. Each question on the form shall be answered and the form shall be executed by all parties to the action or their counsel.

Those parties not concurring in the information contained on the form to be submitted by Plaintiff shall state thereon a brief explanation as to the reasons for their nonconcurrency. Parties failing to state the reasons for nonconcurrency shall be deemed to be in concurrence.

Plaintiff shall serve a copy of the executed form upon all other parties or their counsel at or before the time the same is presented to the arbitrators. Failure of Plaintiff to comply with this rule shall be deemed to be a waiver of any delay damages.

2. No arbitrator shall open the aforesaid envelope or in any other manner attempt to ascertain the contents thereof until the Board of Arbitrators has reached a decision on the merits in the case, and then, only if delay damages are applicable. If, after deciding the merits of the case, delay damages are not applicable, the Chairman of the Board of Arbitrators shall return the unopened envelope to the Office of Judicial Services and Records (Prothonotary), together with the report of the Board.

3. The form referred to in sub-section 1 shall be as follows:

**IN THE COURT OF COMMON PLEAS  
OF LUZERNE COUNTY**

Plaintiff/s :  
vs. :  
: Civil Action -  
:   
Defendant/s : NO. \_\_\_\_\_

**DELAY DAMAGES**

This Court finds that Plaintiff/s has/have not established the probable validity of its claim for the property described in its Complaint.

1. On what date did the cause of action accrue?

2. On what date was the Complaint filed?

3. Was a written offer of settlement made by any Defendant, or additional Defendant? If so state:

a. The date of the written offer.

b. Whether it was in effect at the time of commencement of the hearing;

c. The amount of the offer of settlement; and,

d. Attach a copy of the written offer of settlement.

\_\_\_\_\_ Attorney for Plaintiff/s

\_\_\_\_\_ Attorney for Defendant/s

I do not concur for the following reasons:

\_\_\_\_\_ Attorney for Defendant/s

\_\_\_\_\_ Attorney for Add'l Defendant/s

Where opposing counsel refuses to execute the document, the following shall be attached:

**ATTORNEY'S CERTIFICATE**

I hereby certify that I served a copy of the foregoing document on opposing counsel on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and sought concurrence.

\_\_\_\_\_ Attorney for Plaintiff/s

**Rule 1311. Award Docketing, Notice, Lien and Judgment.**

Upon the filing of the award, if any, said award shall have full force and effect as would any decision of the Court subject to right of appeal. Notice of the Report and Award, if any, shall be served by the Office of Judicial Services and Records (Prothonotary) upon all counsel and pro se parties.

**Rule 1311. Appeal.**

1. Any party may appeal from the findings or award of the Board of Arbitrators to the Court of Common Pleas of Luzerne County. Appeals shall result in de novo proceedings before the trial court. The right of appeal is limited by Rule 1301(f) which concerns failure of a party to be present at time of arbitration.

2. The cost of appeal shall be set by Court order and shall include a sum to compensate the fees of the Arbitration board.

3. Simultaneously with the filing of the appeal, appellant shall file a Certificate of Readiness for Trial with the Office of Judicial Services and Records (Prothonotary), serve all counsel and unrepresented parties and shall deliver a time-stamped copy to Court Administration which shall assign the case to a Judge for trial in the ordinary course.

**Rule 1313. Compensation.**

Each arbitrator shall receive a fee of \$200.00 as compensation for each half day of hearing required (a half-day shall be no more than three hours regardless of the number of cases heard within a half-day period). Members of the Board shall not be entitled to compensation until after the filing of the original report and/or award with the Office of Judicial Services and Records (Prothonotary) with a time-stamped copy delivered to Court Administration.

[Pa.B. Doc. No. 16-1062. Filed for public inspection June 24, 2016, 9:00 a.m.]

**MIFFLIN COUNTY**

**Crime Victim's Compensation Fund; Victim Witness Services Fund; CP-44-CV-2-2016**

**Administrative Order**

*And Now, To Wit*, this 10th day of May, 2016, this Court pursuant to Title 18, Section 11.1101, Costs, (a) *Orders* the increased assessment of the Crime Victim's Compensation Fund and Victim Witness Services Fund to a total of one hundred (\$100.00), unless otherwise ordered by the Court. This cost shall be imposed at both the Magisterial District Courts and the Common Pleas Court of the Judicial District notwithstanding any statutory provision to the contrary.

Pursuant to Title 18, Section 11.1101 Costs (b) Disposition,

(1) Thirty-five (\$35.00) dollars of the costs imposed under subsection (a)(1) and (2) plus thirty (30%) percent of the costs imposed under subsection (a)(1) which exceed sixty (\$60.00) dollars (a total of forty-seven (\$47.00) dollars) shall be paid into the Crime Victim's Compensation Fund, and:

(2) Twenty-five (\$25.00) dollars of the costs imposed under subsection (a)(1) and (2) plus seventy (70%) percent of the costs imposed under subsection (a)(1) and (2) which exceed sixty (\$60.00) dollars (a total of fifty-three (\$53.00) dollars) shall be paid into the Victim Witness Services Fund.

The cost assessed and collected under Section (b)(2) that exceed sixty (\$60.00) dollars shall be returned by the Pennsylvania Commission on Crime and Delinquency to the County of Mifflin for victim witness services.

*It Is Further Ordered* that in accordance with the Pa.R.Crim.P. 105, the District Court Administrator shall:

(a) File seven (7) certified copy of this Order with the Administrative Office of the Pennsylvania Courts,

(b) Distribute two (2) certified copies and one (1) CD-ROM to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*,

(c) File one (1) certified copy hereof with the Criminal Procedural Rules Committee,

(d) Supervise the distribution of this Order to all Judges and all members of the Criminal Bar of this Court.

*By the Court*

DAVID W. BARRON,  
*President Judge*

[Pa.B. Doc. No. 16-1063. Filed for public inspection June 24, 2016, 9:00 a.m.]

**PERRY COUNTY**

**Repeal and Adoption of Rules of Orphans' Court Procedure; No. 201603524**

**Order**

*And Now*, May 31, 2016, it is hereby ordered and decreed that all Perry County Rules of Orphans' Court Procedure filed prior to September 1, 2016 are repealed effective the date that the rules herein become effective.

The Court hereby adopts the following Perry/Juniata County Rules of Orphans' Court Procedure to be effective as follows:

(1) All following local rules shall be effective September 1, 2016. It is further ordered that the District Court Administrator shall file:

(a) seven (7) certified copies of the Local Rules with Administrative Office of Pennsylvania Courts;

(b) two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) one (1) certified copy to the Civil Procedural Rules Committee, and the Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary and upon request and payment of reasonable costs of reproduction and/or mailing the Prothonotary shall furnish to any person a copy of the requested Local Rules.

*By the Court*

KATHY A. MORROW,  
*President Judge*

**LOCAL RULES OF ORPHANS' COURT  
PROCEDURE**

**Rule 1. Judges Local Rules.**

**Rule 1.1-1. Citation of Rules.**

These rules shall be known as the Rules of the Court of Common Pleas of Perry and Juniata Counties, Orphans' Court Division, adopted pursuant to PA O.C. Rule 1.5.

**Rule 1.2-1. Certificates of Appointment of Fiduciary.**

The Clerk of the Orphans' Court Division shall not issue a certificate of the appointment of any fiduciary until the security, if required by the Court, has been entered.

**Rule 1.2-2. Corporate Sureties. Approval.**

Surety companies authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in the Court; provided that a current certificate of the right to do business, issued by the Insurance Department of this Commonwealth; shall be on file with the Clerk of the Orphans' Court, and provided, further, that no bond shall be executed by any surety company after May of any year, until such certificate, issued after March 31 of that year, shall have been on file with the Court.

**Rule 1.6. Orphans' Court Mediation Program.**

(a) Cases filed in the Orphans' Court division may be ordered into the Orphans' Court Mediation Program by the Judge to whom the case is assigned, or by request of any of the parties by filing a Request for a Court Appointed Mediator. Upon filing a request for a Court appointed mediator, the Judge to whom the case is assigned, shall appoint said mediator.

(b) The mediators shall be practicing attorneys that are members of the Perry County Bar Association and/or the Juniata County Bar Association with an emphasis in their practice on Orphans' Court matters. A list of mediators shall be maintained by the District Court Administrator, and selected by the Court from said list.

(c) Upon appointment, the mediator shall schedule the mediation within forty five (45) days of the order of Court. The attendance of legal counsel, the parties and a representative, including an insurance carrier, with au-

thority to enter into a full and complete compromise and settlement is mandatory, if applicable. If lead counsel, the parties or a representative fail to appear after having been properly notified, absent good cause, the mediation will be held as schedule.

(d) At least ten (10) days prior to the mediation, each party shall file and serve on the other party a mediation statement which must include the following: (1) a succinct explanation of the facts and relief sought; (2) significant legal issues that remain unsolved; (3) summary of medical and expert reports (if applicable); (4) itemized list of damages; and (5) settlement posture and rationale. Failure to file a mediation statement may result in sanctions if requested by the mediator.

(e) Each party to the case selected for mediation shall pay a mediation fee to be made payable to the Clerk of the Orphans' Court and submitted to the Clerk of the Orphans' Court. The mediation fee shall be set by administrative order, and information with regard to the fee shall be available from the Clerk of the Orphans' Court.

(f) If the case has not been resolved, within fourteen (14) days from the date of the mediation, the mediator shall send a report setting forth the mediator's assessment of the case and the mediator's recommendation regarding settlement. A copy of the report shall be provided to and maintained by the District Court Administrator until the case is closed.

(g) If the case is resolved and a settlement agreed upon, the mediator shall send a letter to the Judge, with copies to counsel and the District Court Administrator.

(h) The mediator shall not be subpoenaed or requested to testify or produce documents by any party in any pending or subsequent litigation arising out of the same or similar matter. Any party, person, or entity that attempts to compel such testimony or production shall be liable and indemnify the mediator and other protected participants for all reasonable costs, fees and expenses. The mediator shall have the same limited immunity as judges pursuant to the applicable law as it relates to Common Pleas Judges. Notwithstanding the preceding subsections the court may in its discretion set a case for an alternative dispute resolution ("ADR") before a private mediator. The method of selection of the private mediator shall be in the discretion of the Court. All parties shall bear equally the costs of any Court-ordered private mediation; provided, however, that the Court shall take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

#### 1.6-1. Forms.

Attached to these rules, is the form to be used for the Request for a Court Appointed Mediator in Orphans' Court matters.

#### Rule 5.10(b). Public Sale of Real Property.

(a) After allowance of public sale of real property, the petitioner shall, in addition to such notice as required by law, give notice of the sale to each party in interest. The notice may be given by first class mail and must be given at least twenty (20) day prior to the date of the proposed sale. In addition, notice of the sale must be published at least one time in a newspaper of general circulation in the county where the real property is located.

(b) The published public notice of the sale shall contain the following information:

(i) the address of the property and the municipality in which it is located;

(ii) the area of the property in terms of acres or square feet;

(iii) a list of the improvements of the property, if one is available;

(iv) a deed or survey description of the property, if one is available

(v) the name of the grantee of the last recorded deed for the property, together with the deed/record book or instrument number.

#### Rule 5.16-1. Procedure under § 3102.

Probate, Estates and Fiduciaries Code of 1972.

(a) *Contents of Petition.* A Petition under section 3102 of the Probates, Estates and Fiduciaries Code of 1972 (20 P.S. Section 3102), for the settlement of a small estate shall set forth

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

(2) the name and address of the petitioner, his relationship to the decedent and whether or not he formed a part of the decedent's household at the date of his death;

(3) if petitioner be the surviving spouse, the date and place of the ceremonial marriage, and the name and official capacity of the person who performed the ceremony; or, in the case of a common law marriage, all averments necessary to establish the validity of such marriage;

(4) whether the decedent died testate or intestate; where, when and to whom letters were granted, and the amount of bond given by the personal representative;

(5) the names, relationships and a brief description of the interest of all persons entitled to share in the decedent's estate under the will or intestate laws, stating which are minors, incompetents or deceased, with the names of their fiduciaries, and whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the Probate, Estates and Fiduciaries Code (20 P.S. Section 3101) or otherwise;

(6) the person entitled to the family exemption, and the facts on which the claim is based;

(7) an itemized statement of the property of the decedent and an appraisal thereof;

(8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;

(9) the names and all unpaid claimants of whom the petitioner has notice or knowledge; the nature and amount of each claim; and whether such claims are admitted;

(10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register; the amount of any inheritance tax assessed; and the date of payment thereof;

(11) that ten days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown; and

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

(b) *Exhibits*. The following exhibits will be attached to the petition;

- (1) a copy of decedent's will;
- (2) consents of the surety, and of unpaid beneficiaries, heirs and claimants who consent thereto;
- (3) a copy of the notice given; and
- (4) the inheritance tax voucher, or in lieu therefore a statement from the Pennsylvania Department of Revenue that no tax is due.

(c) *Appraisal*. No formal appraisal is required, unless ordered by the court.

**Rule 5-16-2. Procedures Under § 3546.**

Probate, Estate and Fiduciaries Code of 1972.

(a) *Contents of Petition*. A petition under section 3546 of the Probate, Estates and Fiduciaries Code of 1972 (20 P.S. Section 3546) for the determination of title shall set forth

- (1) the name of the petitioner and his relationship to the decedent;
- (2) the facts on which the claim of the petitioner is based;
- (3) whether the decedent died testate or intestate, and where, when and to whom letters were granted;
- (4) a description of the real property located within the Commonwealth, and the place, book and page and/or instrument number of recording of the last deed thereto.;
- (5) the names and addresses of all known creditors and parties in interest; and
- (6) the facts material to a determination of the title.

(b) *Exhibits*. The following exhibits shall be attached to the Petition:

- (1) the notice which has been given to creditors, and parties in interest; if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and a
- (2) a copy of the decedent's will.

**Rule 9.1. Notice of Hearings.**

Notice of the initial hearing shall be given by regular mail to the counsel of record for the Estate, counsel of record for the exceptant(s), each heir at the last known address, to each unpaid creditor and to the Department of Revenue, the Department of Human Services, or other agency of the Commonwealth of Pennsylvania, if such Department or agency has, according to the information of the Clerk, a claim against the estate to be audited. If a party is unrepresented, notice shall be mailed to the last known address of record.

To the extent possible, the auditor shall expedite the hearings, and any party in interest may apply to the Court for an order on the auditor to proceed and file a report or else give the reasons for the alleged delay, if there be an unreasonable delay.

**9.1.-1. Pre-Hearing Conference.**

The auditor shall schedule a pre-hearing conference at which time the accountant or his attorney shall present to the auditor all written notices of claims of creditors, legatees, devisees, next of kin and others interested in the estate given the accountant and also a list of all other creditors of which he/she has any information and mention the claims of creditors he recommends for allowance.

**Rule 9.6. Notice of Filing Report.**

When the auditor has his report completed, he/she shall present it to the Court along with a proposed Decree Nisi for consideration by the Court. A copy of said report and the signed Decree Nisi shall be mailed via regular mail to all attorneys who appeared before him and all exceptants who appeared without attorneys.

**9.7. Confirmation of Report.**

When an auditor's report is presented to the Court, it will be confirmed nisi and filed. Exceptions to the Report must be filed within fifteen (15) days of the date of the Decree Nisi. When no exceptions to an auditor's report are filed within the said period, the Clerk of the Orphans' Court shall endorse the absolute confirmation on the report.

**9.8-1. Security for Expenses and Fees.**

The Estate and exceptant(s) shall each provide to the Auditor an estimate of the amount of time needed to present their case. Thereafter, the Auditor shall recommend to the Court an amount to be held in escrow by the Register of Wills. Said deposit shall be applied to the Auditor's bill of costs as submitted by the Auditor and approved by the Court.

If exceptions are filed to the Report prior to confirmation absolute or if an appeal is filed after the confirmation, the party filing the same must pay in full all outstanding auditor's fees and costs as set forth on the Auditor's bill of costs, regardless of the recommendation of the Auditor as to allocation of the payment. The Court may address the issue of auditor's fees and costs at the time of the disposition of the exceptions or appeal.

**10.1.-1. Certification of Record.**

(a) *Contents of Petition*. A Petition to fix a date for a hearing from a certification of record to the court from the Register shall be promptly presented to the court and shall set forth;

- (1) the nature of the proceedings before the Register;
- (2) the basis for the certification of record; and
- (3) the names and address of all parties in interest including those who have not been made parties to the record.

(b) *Certification by Register*. When the record has been certified by the Register, the petition required by subparagraph (a) shall be presented by the party who instituted the contest, or, in special circumstances, as the Court may direct.

(c) *Citation*. Upon allowance of the petition, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the matter upon which the certification is requested or based, as the case may be, should not be determined by the Court on a day certain therein indicated.

**10.4. Appeals for the Register of Wills.**

(a) *Contents of Petition*. When an appeal is taken from a judicial act of, or proceeding before, the Register, the appellant shall promptly present a petition to the Court, which shall set forth:

- (1) the nature of the proceeding before the Register;
- (2) the basis for the appeal; and
- (3) the names and address of all parties in interest, including those who have not been made parties to the record.

(b) *Citation.* If the petition sets forth a prima facie case, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside.

**10.4.1. Grant of Jury Trial.**

(a) On appeal from the Register, or in a proceeding removed from or certified by the Register, the Court in its discretion may impanel a jury at any stage of the proceedings and forthwith proceed with a jury trial.

(b) On appeal from the Register, or in a proceeding removed from or certified by the Register, the Court in its discretion may, either at the conclusion of all the evidence presented by proponents and contestants or before all such evidence has been produced, when it is satisfied that sufficient evidence has been presented so as to warrant, grant a jury trial at a future date.

(c) If a jury trial is granted, as provided in subparagraph (a) or (b) hereof, the Court shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the court shall determine.

[Pa.B. Doc. No. 16-1064. Filed for public inspection June 24, 2016, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Gregory Danese (# 20304), having been disbarred from the practice of law in the state of New Jersey, the Supreme Court of Pennsylvania issued an Order on June 10, 2016, disbaring Gregory Danese from the Bar of this Commonwealth, effective July 10, 2016. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,  
*Assistant Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 16-1065. Filed for public inspection June 24, 2016, 9:00 a.m.]

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