

# THE COURTS

## Title 210—APPELLATE PROCEDURE

[ 210 PA. CODE CHS. 1, 9, 11, 13, 15, 17, 19, 21,  
25, 27, 31 AND 33 ]

Order Adopting Amendments to Pa.R.A.P. 102, 121,  
122, 123, 124, 905, 909, 911, 1101, 1102, 1112,  
1116, 1121, 1123, 1311, 1314, 1321, 1514, 1732,  
1972, 2155, 2156, 2171, 2172, 2185, 2186, 2542,  
2545, 2571, 2742, 3102, 3191, 3307 and 3309; No.  
195 Appellate Procedural Rules; Doc. No. 1

### Order

*Per Curiam:*

*And Now*, this 10th day of September, 2008, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 36 Pa.B. 5554 (September 2, 2006):

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rules of Appellate Procedure 102, 121, 122, 123, 124, 905, 909, 911, 1101, 1102, 1112, 1116, 1121, 1123, 1311, 1314, 1321, 1514, 1732, 1972, 2155, 2156, 2171, 2172, 2185, 2186, 2542, 2545, 2571, 2742, 3102, 3191, 3307 and 3309, 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 December 1, 2008.

### Annex A

#### TITLE 210. APPELLATE PROCEDURE PART I. RULES OF APPELLATE PROCEDURE CHAPTER 1. GENERAL PROVISIONS IN GENERAL

#### Rule 102. Definitions.

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

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[ **Paperbooks.** Briefs and reproduced record. The term does not include applications for reconsideration of denial of allowance of appeal under Rule 1123(b) (reconsideration) or applications for reargument under Chapter 25 (post-submission proceedings). ]

\* \* \* \* \*

#### Rule 121. Filing and Service.

(a) *Filing.*—Papers required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules, filing shall not be timely unless the papers are received by the prothonotary within the time fixed for filing. [ **Paperbooks shall be deemed filed on the day**

**of mailing if first class mail is utilized.** ] If an application under these rules requests relief which may be granted by a single judge, a judge in extraordinary circumstances may permit the application and any related papers to be filed with that judge. [ , in which ] In that event [ that ] the judge shall note thereon the date of filing and shall thereafter transmit such papers to the clerk.

A **pro se filing submitted by a prisoner incarcerated in a correctional facility is deemed filed as of the date it is delivered to the prison authorities for purposes of mailing or placed in the institutional mailbox, as evidenced by a properly executed prisoner cash slip or other reasonably verifiable evidence of the date that the prisoner deposited the pro se filing with the prison authorities.**

\* \* \* \* \*

(c) *Manner of service.*—Service may be [ **personal or by first class mail. Personal service under these rules includes delivery of the copy to a clerk or other responsible person at the office of the person served.** ]:

(1) **by personal service, which includes delivery of the copy to a clerk or other responsible person at the office of the person served, but does not include inter-office mail;**

(2) **by first class, express, or priority United States Postal Service mail;**

(3) **by commercial carrier with delivery intended to be at least as expeditious as first class mail if the carrier can verify the date of delivery to it;**

(4) **by facsimile or e-mail with the agreement of the party being served as stated in the certificate of service.**

Service by mail is complete on mailing.

\* \* \* \* \*

(e) *Additional time after service by mail and commercial carrier.*—Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party (other than an order of a court or other government unit) and the paper is served by **United States mail or by commercial carrier**, three days shall be added to the prescribed period.

**Official Note:** [ The term “related papers” in Subdivision (a) of this rule includes any appeal papers required under Rule 1702 (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief. An acknowledgement of service may be executed by an individual other than the person served, e.g., by a clerk or other responsible person as contemplated by Subdivision (c) of the rule. Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration

or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120. ]

**Subdivision (a)**—The term “related papers” in Subdivision (a) of this rule includes any appeal papers required under Rule 1702 (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief.

In 2008, the term “paperbooks” was replaced with “briefs and reproduced records” throughout these rules. The reference to the deemed filing date for paperbooks when first class mail was used that was formerly found in subdivision (a) is now found in Pa.R.A.P. 2185 regarding filing briefs and in Pa.R.A.P. 2186 regarding filing reproduced records.

As to pro se filings by persons incarcerated in correctional facilities, see *Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423 (1997); *Smith v. Pa. Bd. of Prob. & Parole*, 546 Pa. 115, 683 A.2d 278 (1996); *Commonwealth v. Johnson*, 860 A.2d 146 (Pa.Super. 2004).

**Subdivision (c)**—An acknowledgement of service may be executed by an individual other than the person served, e.g., by a clerk or other responsible person.

**Subdivision (d)**—With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.

**Subdivision (e)**—Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice.

#### **Rule 122. Content and Form of Proof of Service.**

(a) *Content*.—A proof of service shall contain a statement of the date and manner of service and of the names of the persons served.

(b) *Form*.—Each name and address shall be separately set forth in the form of a mailing address, including applicable zip code, regardless of the actual method of service employed. **The proof of service shall also show the telephone number, the party represented, and, where applicable, an e-mail or facsimile address.** The name, address and telephone number of the serving party shall be similarly set forth, followed by the attorney’s registration number. **[ The telephone number of each person served shall not be noted next to the person’s name. ]** A proof of service may be in substantially the following form:

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

**[ Richard Row, Esquire ] Name, [ (215) 555-1234 ] Telephone number**  
**[ 123 East Walnut Street ] Mailing address**  
**[ Philadelphia, Pa. 19175 ]**  
**[ (Counsel for XYZ Trucking Co.) ]**  
**(Party represented)**

Acceptance of service endorsed by the following:

**[ John Doe, Esquire ] Name, [ (215) 555-5678 ] Telephone number**  
**[ 123 East Chestnut Street ] Mailing address**  
**[ Philadelphia, Pa. 19175 ]**  
**[ (Counsel for ABC Forwarding Co.) ]**  
**(Party represented)**

Service in person as follows:

**[ John Smith, Esquire ] Name, [ (717) 787 1234 ] Telephone number**  
**[ Counsel ]**  
**[ Pennsylvania Public Utility Commission ]**  
**[ Room 117 ]**  
**[ North Office Building ] Street Address**  
**[ Harrisburg, Pa. 17120 ] Mailing address**  
**(if different) (Party represented)**

**[ Hon. William Bradford (717) 787-3391 Attorney General of Pennsylvania c/o Miss Mary Smith, Secretary to the Attorney General 16th Floor Strawberry Square Harrisburg, Pa. 17120 ]**

Service by commercial carrier as follows:

**Name of commercial carrier**  
**Addressee’s name, Telephone number**  
**Street address**  
**Mailing Address (if different)**  
**(Party represented)**

Service by e-mail at following:

**E-mail address, with agreement of:**  
**Name, Telephone number**  
**Mailing address**  
**(Party represented)**

Service by facsimile at following:

**Fax number with the agreement of:**  
**Name, Telephone number**  
**Mailing address**  
**(Party represented)**

**[ Dated: May 26, 1975 ] Date:**

(S)

**[ John Jones, Esquire (Attorney Registration No. 00000) 123 East Chestnut Street Philadelphia, Pa. 19175 Of counsel for ABC Railway Corporation ]**  
**Name, Telephone number (Attorney Registration No. 00000)**  
**Mailing address**  
**(Party represented)**

**Official Note:** Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities) a knowingly false proof of service constitutes a misdemeanor of the second degree. [Where a large number of persons are named in the proof of service the appellate prothonotary and other parties may cut up a photocopy of the proof of service to form mailing labels for docketing notices, mailing briefs, etc., without the need to retype the list.]

**Rule 123. Application for Relief.**

\* \* \* \* \*

(b) *Answer*.—Any party may file an answer to an application within 14 days after service of the application, but applications under Chapter 17 (effect of appeals; supersedeas and stays), or for delay in remand of the record, may be acted upon after reasonable notice, unless the exigency of the case is such as to impel the court to dispense with such notice. The court may shorten or extend the time for answering any application. **Answers shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.**

\* \* \* \* \*

**Rule 124. Form of Papers; Number of Copies.**

(a) *Size and other physical characteristics*.—All documents filed in an appellate court shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(1) The document shall be prepared on white paper (except for covers, dividers and similar sheets) of good quality.

(2) The first sheet (except the cover of a [paperbook] **brief or reproduced record**) shall contain a 3 inch space from the top of the paper for all court stampings, filing notices, etc.

(3) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Except as provided in subdivision (2), margins must be at least one inch on all four sides.

(4) The lettering shall be clear and legible and no smaller than point 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents, [and paperbooks] **briefs and reproduced records** may be lettered on both sides of a page.

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**CHAPTER 9. APPEALS FROM LOWER COURTS**

**Rule 905. Filing of Notice of Appeal.**

\* \* \* \* \*

**Official Note:** Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of *certiorari* in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

**To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, see Rule 1101(b).**

\* \* \* \* \*

**Rule 909. Appeals to the Supreme Court. Jurisdictional Statement. Sanctions.**

\* \* \* \* \*

(b) [ *Brief in opposition* ] *Answer*.—Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court an original and eight copies of [ **a brief in opposition** ] **an answer** thereto in the form prescribed by Rule 911. **The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.** No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file [ **a brief in opposition** ] **an answer** who does not intend to do so shall [ **file** ], **within the time fixed by these rules** for filing **an answer, [ the brief in opposition ] file** a letter stating that [ **a brief in opposition** ] **an answer** to the jurisdictional statement will not be filed. The failure to file [ **a brief in opposition** ] **an answer** will not be construed as concurrence in the jurisdictional statement.

\* \* \* \* \*

Rule 911. [ **Brief in Opposition** ] **Answer** to Jurisdictional Statement. Content. Form.

[ **A brief in opposition** ] **An answer** to a jurisdictional statement shall set forth any procedural, substantive or other argument or ground why the order appealed from is not reviewable as of right and why the Supreme Court should not grant an appeal by allowance. The [ **brief** ] **answer** need not be set forth in numbered paragraphs in the manner of a pleading and shall not exceed five pages.

\* \* \* \* \*

**CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT**

**APPEALS AS OF RIGHT FROM COMMONWEALTH COURT AND SUPERIOR COURT**

**Rule 1101. Appeals as of Right from the Commonwealth Court.**

\* \* \* \* \*

(b) *Procedure on appeal*. An appeal within the scope of Subdivision (a) of this rule shall be taken to the Supreme Court in the manner prescribed in Chapter 9 (appeals from lower courts), except that if the notice of appeal is transmitted to the Prothonotary of the Commonwealth Court by means of first class [ **mail** ], express, or priority United States Postal Service mail, the notice of appeal shall be deemed received by the [ **Prothonotary** ] **prothonotary** for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a [ **U.S.** ] **United States** Postal Service Form 3817 [ **certificate** ] **Certificate** of [ **mailing** ] **Mailing** or other similar **United States Postal Service form from which the date of deposit can be verified**. The certificate of mailing or other similar **Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service**, shall show the docket number of the matter in the Commonwealth Court and shall be either enclosed with the notice of appeal or separately mailed to the [P]rothonotary. Upon actual receipt of the notice of appeal the [ **Prothonotary** ] **prothonotary** shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when the appeal was taken, which date shall be shown on the docket.

**Official Note:** Subdivision (a) is based on 42 Pa.C.S. § 723 (appeals from the Commonwealth Court). This rule is not applicable to an appeal under 42 Pa.C.S. § 763(b) (awards of arbitrators). See also 42 Pa.C.S. § 5105(b) (successive appeals) which provides as follows:

(b) *Successive appeals.* Except as otherwise provided in this subsection, the rights conferred by subsection (a) are cumulative, so that a litigant may as a matter of right cause a final order of any tribunal in any matter which itself constitutes an appeal to such tribunal, to be further reviewed by the court having jurisdiction of appeals from such tribunal. Except as provided in section 723 (relating to appeals from the Commonwealth Court) there shall be no right of appeal from the Superior Court or the Commonwealth Court to the Supreme Court under this section or otherwise.

Appealable orders to which this rule is not applicable are governed by the procedures of Rule 1111 (form of papers; number of copies) et seq. Rule 906(4) (service of notice of appeal) is not applicable to an appeal under this rule since that provision relates only to service upon the district court administrator of a court of common pleas.

The [ U.S. ] United States Postal Service Form 3817 mentioned in Subdivision (b) is reproduced in the note to Rule 1112 (appeals by allowance).

**Rule 1102. Improvident Appeals.**

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**Official Note:** Based on 42 Pa.C.S. § 724(b) (improvident appeals). In a similar fashion, any motion to quash the appeal would be regarded as [ a brief in opposition ] an answer to the petition under Rule 1116 ([ brief in opposition ] answer to the petition for allowance of appeal).

**PETITION FOR ALLOWANCE OF APPEAL**

**Rule 1112. Appeals by Allowance.**

\* \* \* \* \*

(c) *Petition for allowance of appeal.*—Allowance of an appeal from a final order of the Superior Court or the Commonwealth Court may be sought by filing a petition for allowance of appeal with the Prothonotary of the Supreme Court within the time allowed by Rule 1113 (time for petitioning for allowance of appeal), with proof

of service on all other parties to the matter in the appellate court below. If the petition for allowance of appeal is transmitted to the Prothonotary of the Supreme Court by means of first class, **express, or priority United States Postal Service** mail, the petition shall be deemed received by the [ Prothonotary ] prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a [ U.S. ] United States Postal Service Form 3817 [ certificate ] Certificate of [ mailing ] Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the appellate court below and shall be either enclosed with the petition or separately mailed to the [ Prothonotary ] prothonotary. Upon actual receipt of the petition for allowance of appeal the Prothonotary of the Supreme Court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when allowance of appeal was sought, which date shall be shown on the docket. The Prothonotary of the Supreme Court shall immediately note the Supreme Court docket number upon the petition for allowance of appeal and give written notice of the docket number assignment in person or by first class mail to the prothonotary of the appellate court below who shall note on the docket that a petition for allowance of appeal has been filed to the petitioner and to the other persons named in the proof of service accompanying the petition.

\* \* \* \* \*

**Official Note:** Based on 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the [ prothonotary ] Prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

The [ U.S. ] United States Postal Service [ Form ] form may be in substantially the following form:



Certificate Of Mailing

To pay fee, affix stamps or meter postage here.

This Certificate of Mailing provides evidence that mail has been presented to USPS® for mailing. This form may be used for domestic and international mail.

From: \_\_\_\_\_

To: \_\_\_\_\_

Postmark Here

PS Form 3817, April 2007 PSN 7530-02-000-9065

The transmittal should be taken unsealed to the Post Office, the Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified should be obtained, cancelled, and attached to the petition, and the envelope should only then be sealed. [ Occasionally a postal clerk will refuse to cooperate; in such cases ] Alternately, the cancelled Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified can be submitted to the prothonotary under separate cover with clear identification of the filing to which it relates. [ may be withdrawn from the envelope, the envelope sealed, the Form 3817 pasted firmly to the outside of the envelope, and the entire package submitted to the postal clerk with instructions to execute the Form 3817 pasted on the envelope. ]

It is recommended that the petitioner obtain a duplicate copy of the Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified as evidence of mailing. Since the Post Office is technically the filing office for the purpose of this rule a petition which was mailed in accordance with this rule and which is subsequently lost in the mail will nevertheless toll the time for petitioning for allowance of appeal. However, counsel will be expected to follow up on a mail filing by telephone inquiry to the appellate prothonotary where written notice of the docket number assignment is not received in due course.

\* \* \* \* \*

Rule 1116. [ Brief in Opposition ] Answer to the Petition for Allowance of Appeal.

Within 14 days after service of a petition for allowance of appeal an adverse party may file [ a brief in opposition ] an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The [ brief in opposition ] answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court and shall comply with Rule 1115(a)(7) (content of petition for allowance of appeal.). No separate motion to dismiss a petition for allowance of appeal will be received. A party entitled to file [ a brief in opposition ] an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing [ a brief in opposition ] an answer, file a letter stating that [ a brief in opposition ] an answer to the petition for allowance of appeal will not be filed. The failure to file [ a brief in opposition ] an answer will not be construed as concurrence in the request for allowance of appeal.

Official Note: [ Based on former Supreme Court Rule 62 and makes no change in substance except as follows: The time for opposition is increased from ten to 17 days (where service is by mail). ] This rule and Rule 1115 contemplate that the petition and [ brief in opposition ] answer will address themselves

to the heart of the issue, i.e. whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court (as in the petition for review under Chapter 15) such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

**Rule 1121. Transmission of Papers to and Action by the Court.**

Upon receipt of the [ **brief in opposition** ] answer to the petition for allowance of appeal, or a letter stating that no [ **brief in opposition** ] answer will be filed, from each party entitled to file such, the petition and the [ **brief in opposition** ] answer, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration. An appeal may be allowed limited to one or more of the questions presented in the petition, in which case the order allowing the appeal shall specify the question or questions which will be considered by the Court.

**Rule 1123. Denial of Appeal; Reconsideration.**

\* \* \* \* \*

(c) *Manner of filing.* If the application for reconsideration is transmitted to the prothonotary of the appellate court by means of first class, **express, or priority United States Postal Service** mail, the application shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing, **or other similar United States Postal Service form from which the date of deposit can be verified.** The certificate of mailing **or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service,** shall show the docket number of the matter in the court in which reconsideration is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

[ **Official Note: The 1996 amendment to subdivision (b) lengthens the time for filing an application for reconsideration from seven days after service of notice of entry of the order denying a petition for allowance of appeal to fourteen days after entry of the order. The 1996 amendment adding subdivision (c) provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817—certificate of mailing. These amendments conform reconsideration practice under Rule 1123 to reargument practice under Rule 2542. ]**

**CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION**

**Rule 1311. Interlocutory Appeals by Permission.**

**1994 Order**

\* \* \* \* \*

(b) *Petition for permission to appeal.*—Permission to appeal from an interlocutory order containing the statement prescribed by 42 Pa.C.S. § 702(b) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order in the lower court or other government unit with proof of service on all other parties to the matter in the lower court or other government unit and on the government unit or clerk of the lower court, who shall file the petition of record in such lower court. An application for an amendment of an interlocutory order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b) shall be filed with the lower court or other government unit within 30 days after the entry of such interlocutory order and permission to appeal may be sought within 30 days after entry of the order as amended. Unless the trial court or other [ **governmental** ] government unit acts on the application within 30 days after it is filed, the trial court or other [ **governmental** ] government unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class, **express, or priority United States Postal Service** mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a [ **U. S.** ] **United States** Postal Service Form 3817 [ **certificate** ] **Certificate** of [ **mailing** ] **Mailing, or other similar United States Postal Service form from which the date of deposit can be verified.** The certificate of mailing **or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service,** shall show the docket number of the matter in the lower court or other government unit and shall be either enclosed with the petition or separately mailed to the prothonotary. Upon actual receipt of the petition for permission to appeal the prothonotary of the appellate court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give written notice of the docket number assignment in person or by first class mail to the government unit or clerk of the lower court, to the petitioner and to the other persons named in the proof of service accompanying the petition.

\* \* \* \* \*

**Official Note:**

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See the [ **note** ] **Official Note** to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 **or other similar United States Postal Service form from which the date of deposit can be verified** is used.

\* \* \* \* \*

**Rule 1314. [ **Brief in Opposition** ] Answer to the Petition for Permission to Appeal.**

Within 14 days after service of a petition for permission to appeal an adverse party may file [ **a brief in opposition** ] **an answer. The answer shall be deemed filed on the date of mailing if first class, express, or**

priority United States Postal Service mail is utilized. The [ brief in opposition ] answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the interlocutory order involved should not be reviewed by the appellate court and shall comply with Rule 1312(a)(7) (content of petition for permission to appeal). No separate motion to dismiss a petition for permission to appeal will be received. A party entitled to file [ a brief in opposition ] an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing [ a brief in opposition ] an answer, file a letter stating that [ a brief in opposition ] an answer to the petition for permission to appeal will not be filed. The failure to file [ a brief in opposition ] an answer will not be construed as concurrence in the request for permission to appeal.

**Rule 1321. Transmission of Papers to and Action by the Court.**

Upon receipt of the [ brief in opposition ] answer to the petition for permission to appeal, or a letter stating that no [ brief in opposition ] answer will be filed, from each party entitled to file such, the petition and the [ brief in opposition ] answer, if any, shall be distributed by the prothonotary to the appellate court for its consideration. Permission to appeal may be limited to one or more of the questions presented in the petition, in which case the order granting permission to appeal shall specify the question or questions which will be considered by the court.

**CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS  
PETITION FOR REVIEW**

**Rule 1514. Filing and Service of the Petition for Review.**

(a) *Filing with the prothonotary.* The petition for review, with proof of service required by Subdivision (c) of this rule, shall be filed with the prothonotary of the appellate court in person or by first class, **express, or priority United States Postal Service [ or certified ]** mail.

If the petition for review is filed by first class, **express, or priority United States Postal Service [ or certified ]** mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as [ stamped by post office personnel ] shown on a [ U. S. ] United States Postal Service Form 3817, [ certificate ] Certificate of [ mailing ] Mailing, or [ U. S. Postal Service Form 3800 ] other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary.

\* \* \* \* \*

**Official Note:** See the [ note ] Official Note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United

States Postal Service form from which the date of deposit can be verified is used.

\* \* \* \* \*

**CHAPTER 17. EFFECT OF APPEALS;  
SUPERSEDEAS AND STAYS**

**STAY OF INJUNCTION IN CIVIL MATTERS**

**Rule 1732. Application for Stay or Injunction Pending Appeal.**

\* \* \* \* \*

(b) *Contents of application for stay.*—An application for stay of an order of a lower court pending appeal, or for approval of or modification of the terms of any supersedeas, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the lower court for the relief sought is not practicable, or that the lower court has denied an application requested, with the reasons given by the lower court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the [ paperbooks ] briefs, if any, used in the lower court.

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**CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS**

**DISPOSITION WITHOUT REACHING THE MERITS**

**Rule 1972. Dispositions on Motion.**

\* \* \* \* \*

Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the appellate court, a motion under this rule shall not relieve any party of the duty of filing [ his paperbooks ] briefs and reproduced records within the time otherwise prescribed therefor. The court may grant or refuse the motion, in whole or in part; may postpone consideration thereof until argument of the case on the merits; or may make such other order as justice may require.

\* \* \* \* \*

**CHAPTER 21. BRIEFS AND REPRODUCED RECORD**

**CONTENT OF REPRODUCED RECORD**

**Rule 2155. Allocation of Cost of Reproduced Record.**

\* \* \* \* \*

(b) *Allocation by court.*—The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 (fees and costs in appellate courts and on appeal), but if either party shall cause material to be included in the reproduced record unnecessarily, the appellate court may on application filed within ten days after the last [ paperbook ] brief is filed, in its order disposing of the appeal impose the cost of reproducing such parts on the designating party.

\* \* \* \* \*

**Rule 2156. Supplemental Reproduced Record.**

When, because of exceptional circumstances, the parties are not able to cooperate on the preparation of the reproduced record as a single document, the appellee may, in lieu of proceeding as otherwise provided in this chapter, prepare, serve and file a Supplemental Reproduced Record setting forth the portions of the record designated by the appellee.

**Official Note:** Former Supreme Court Rules 36, 38 and 57, former Superior Court Rules 28, 30 and 47 and former Commonwealth Court Rules 32A, 82 and 84 all inferentially recognized that a supplemental record might be prepared by the appellee, but the former rules were silent on the occasion for such a [ **paperbook** ] filing. The preparation of a single reproduced record has obvious advantages, especially where one party designates one portion of the testimony, and the other party designates immediately following testimony on the same subject. However, because of emergent circumstances or otherwise, agreement on the mechanics of a joint printing effort may collapse, without affording sufficient time for the filing and determination of an application for enforcement of the usual procedures. In that case an appellee may directly present the relevant portions of the record to the appellate court.

\* \* \* \* \*

**FORM OF BRIEFS AND REPRODUCED RECORD**

**Rule 2171. Method of Reproduction. Separate Brief and Record.**

\* \* \* \* \*

**Official Note:** See Rule 124 (form of papers; number of copies) for general provisions on quality, size and format of papers (including [ **paperbooks** ] **briefs and reproduced records**) filed in Pennsylvania courts.

**Rule 2172. Covers.**

(a) **Briefs and Petitions for Allowance of or Permission to Appeal.**—On the front cover of the brief there shall appear the following:

- (1) [ **The** ] **the** name of the appellate court in which the matter is to be heard[ . ];
- (2) [ **The** ] **the** docket number of the case in the appellate court[ . ];
- (3) [ **The** ] **the** caption of the case in the appellate court, as prescribed by these rules[ . ];
- (4) **title of the filing, such as** “Brief for Appellant” or [ **“Brief for Appellee,”** ] **“Brief for Respondent.”** [ **or, if** ] **If the reproduced record is bound with the brief, the title shall so indicate, for example,** “Brief for Appellant and Reproduced Record,” or “Brief for Appellee and Supplemental Reproduced Record,” **such as** the case may be [ , **or if the matter involves proceedings on petition for allowance of or for permission to appeal, “Petition for Allowance of Appeal,” “Petition for Permission to Appeal” or “Brief in Opposition,” as the case may be, or if the matter is pending in the appellate court on petition for review, “Brief for Petitioner,” “Brief for Petitioner and Reproduced Record,” “Brief for Respondent,” or “Brief for Respondent and Supplemental Reproduced Record,” as the case may be.** ];

(5) [ **Designation** ] **designation** of the order appealed from **such as** “Appeal from the Order of” the court from which the appeal is taken, with the docket number therein[ , **or, if the matter involves proceedings on petition for allowance of or for permission to appeal, “Petition for Allowance of Appeal from the Order of” or “Petition for Permission to Appeal from the Order of” the court or other government unit from which the appeal is sought to be taken, with the docket number therein, or, if the matter is pending in the appellate court on petition for review, “Petition for Review of” the determination sought to be reviewed of the government unit involved, with any docket number therein** ]. On appeals from the Superior Court or the Commonwealth Court its docket number shall be given, followed by a statement as to whether it affirmed, reversed or modified the order of the court or tribunal of first instance, giving also the name of the latter and the docket number, if any, of the case therein[ . ];

(6) [ **The** ] **the** names of counsel, giving the office address and telephone number of the one upon whom it is desired notices shall be served.

\* \* \* \* \*

**FILING AND SERVICE**

**Rule 2185. [ Time for Serving ] Service and Filing of Briefs.**

(a) **General Rule.**—The appellant shall serve **and file** appellant’s brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve **and file** appellee’s brief within 30 days after service of appellant’s brief and reproduced record if proceeding under Rule 2154(a). A party may serve **and file** a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served **and filed** within 30 days of service of the deemed or designated appellee’s first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. **Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.**

(b) **Notice of deferred briefing schedule.**—When the record is filed the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last [ **paperbook** ] **brief** could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last [ **paperbook** ] **brief** in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.



(c) *Definitive copies.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in the briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

**Official Note:** [Unlike the provision for filing other papers, Rule 121(a) provides “paperbooks shall be deemed filed on the day of mailing if first class mail is utilized.” “Paperbooks” are defined in Rule 102 as briefs and reproduced records, but “the term does not include applications for reconsideration of denial of allowance of appeal under Rule 1123(b) (reconsideration) or applications for reargument under Chapter 25 (post-submission proceedings).” ]

\* \* \* \* \*

**Rule 2186. [ Time for Serving ] Service and Filing of Reproduced Record.**

(a) *General rule.*—The reproduced record shall be served and filed not later than:

- (1) the date of service of the brief; or
- (2) 21 days from the date of service of the appellee’s brief in advance form, if the record is being reproduced pursuant to Rule 2154(b) (large records).

**Reproduced records shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.**

\* \* \* \* \*

**CHAPTER 25. POST-SUBMISSION PROCEEDINGS**

**APPLICATION FOR REARGUMENT**

**Rule 2542. Time for Application for Reargument. Manner of Filing.**

\* \* \* \* \*

(b) *Manner of Filing.*—If the application for reargument is transmitted to the prothonotary of the appellate court by means of first class, [ mail ] express, or priority United States Postal Service mail, the application shall be deemed received by the [ Prothonotary ] prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a [ U.S. ] United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the court in which reargument is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in

this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

**Official Note:**

\* \* \* \* \*

The 1986 amendment [ provides ] provided that an application shall be deemed received on the date deposited in the United States mail as shown on a [ U.S. ] United States Postal Service Form 3817 [ certificate ] Certificate of [ mailing ] Mailing.

**The 2008 amendment provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified.**

**Rule 2545. Answer [ in Opposition ] to Application for Reargument.**

Within 14 days after service of an application for reargument, an adverse party may file an answer [ in opposition ]. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer [ in opposition ] need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer [ in opposition ] under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer [ in opposition ], file a letter stating that an answer [ in opposition ] to the application for reargument will not be filed. The failure to file an answer [ in opposition ] will not be construed as concurrence in the request for reargument.

**REMAND OF RECORD**

**Rule 2571. Content of Remanded Record.**

\* \* \* \* \*

(b) [ Paperbooks ] Briefs.—The prothonotary of an appellate court shall not forward any [ paperbook ] brief in a matter to the lower court either prior to or in connection with the remand of the record. The lower court on remand may direct any party to the appeal to file of record in the lower court and serve on the trial judge a copy of any [ paperbook ] brief filed in the appeal.

\* \* \* \* \*

**CHAPTER 27. FEES AND COSTS IN APPELLATE COURTS AND ON APPEAL**

**COSTS**

**Rule 2742. Costs of [ Paperbooks ] Briefs and Reproduced Records.**

The cost of printing or otherwise producing necessary copies of briefs and reproduced records, including copies of the original record reproduced under Rule 2151(a) (consideration of matters on the original record without the necessity of reproduction) shall be taxable, except as otherwise ordered pursuant to Rule 2155 (allocation of cost of reproduced record) at rates not higher than those generally charged for such work in this Commonwealth.

\* \* \* \* \*

**CHAPTER 31. BUSINESS OF THE COURTS  
GENERALLY  
IN GENERAL**

**Rule 3102. Quorum and Action.**

\* \* \* \* \*

(b) *Absence from panel.*—If less than three members of a panel attend a session of the panel, another judge or judges shall be designated to complete the panel if reasonably possible, and if it is not reasonably possible to do so the presiding judge with the consent of the parties present may direct that the matter be heard and determined by a panel of two judges. If the two judges who so heard the matter are unable to agree upon the disposition thereof, the president judge of the court may direct either that the matter be submitted on the [ **paperbooks** ] **briefs** to a third judge, or that the matter be reargued before a full panel.

\* \* \* \* \*

**[ PAPERBOOKS ] BRIEFS**

**Rule 3191. Distribution of [ Paperbooks ] Briefs.**

The following entities shall be entitled to receive distribution of [ **paperbooks** ] **briefs** filed in an appellate court:

- (1) The State Library (two copies).
- (2) The Jenkins Law Library of Philadelphia.
- (3) The Allegheny County Law Library.
- (4) The University of Pennsylvania Law Library.
- (5) The Dickinson Law School Library.
- (6) The University of Pittsburgh Law Library.
- (7) The Harvard Law School.
- (8) The Duquesne University Law Library.
- (9) The Temple Law School Library.
- (10) The Villanova University Law School Library.
- (11) The Delaware Law School of Widener College Law Library.
- (12) The Legal Intelligencer.
- (13) The West Publishing Company

**Official Note:** Based on former Supreme Court Rule 59 and former Superior Court Rule 49. The whole subject of the distribution of [ **paperbooks** ] **briefs** to the court and others is an administrative matter, but the existence of the rule will continue the free distribution of the *Pennsylvania Consolidated Statutes*, the *Pennsylvania Code*, the *Pennsylvania Bulletin* and local government codes to the entities named in the rule by reason of 1 Pa.C.S. § 501 (publication and distribution) 45 Pa.C.S. § 730(3) (pricing and distribution of published documents) and act of May 29, 1935 (P. L. 244, No. 102), § 2.1(b)(4) (46 P. S. § 431.2a(b)(4)).

**CHAPTER 33. CODE OF JUDICIAL CONDUCT**

**Subchapter A. CANONS  
ORIGINAL MATTERS**

**Rule 3307. Applications for Leave to File Original Process.**

\* \* \* \* \*

(b) *General rule.*—The initial pleading in any original action or proceeding shall be prefaced by an application

for leave to file such pleading, showing service upon all parties to such action or proceeding. The matter will be docketed when the application for leave to file is filed with the Prothonotary of the Supreme Court. **The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary.** Appearances shall be filed as in other original actions. An adverse party may file an answer no later than 14 days after service of the application. **The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.** An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer to the application will not be filed. Upon receipt of the answer to the application, or a letter stating that no answer will be filed, from each party entitled to file such, the application, pleadings and answer to the application, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration.

\* \* \* \* \*

**Official Note:** Based on U.S. Supreme Court Rule 9. Presumably this rule will seldom be invoked, since questions concerning the scope of the original jurisdiction of the Supreme Court may usually be avoided by filing the action in a lower court which clearly has subject matter jurisdiction, and immediately thereafter making application for transfer to the Supreme Court under Rule 3309 (applications for extraordinary relief).

**KING'S BENCH MATTERS**

**Rule 3309. Applications for Extraordinary Relief.**

(a) *General rule.*—An application for relief under 42 Pa.C.S. § 726 (extraordinary jurisdiction), or under the powers reserved by the first sentence of Section 1 of the Schedule to the Judiciary Article, shall show service upon all persons who may be affected thereby, or their representatives, and upon the clerk of any court in which the subject matter of the application may be pending. **The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary.** Appearances shall be governed by Rule 1112 (entry of appearance) unless no appearances have been entered below, in which case appearances shall be filed as in original actions.

(b) *Answer*.—An adverse party may file an answer no later than fourteen days after service of the application. **The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.** An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer will not be filed.

\* \* \* \* \*

[Pa.B. Doc. No. 08-1744. Filed for public inspection September 26, 2008, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### LYCOMING COUNTY

#### Administrative Order for Amendments to the Orphans' Court Rules; Doc. No. 08-00685

##### Order

And Now, this 27th day of March, 2008, it is hereby Ordered and Directed as follows:

1. Lycoming County Orphans' Court Rules L5.7, L6.13, L10.1, L17.1, L17.8, L17.12 and L17.13 are hereby rescinded.

2. Lycoming County Orphans' Court Rules L6.1, L6.9, L17.4 and 17.9 are revised as indicated in the attachment. (*Italics is new language; strikeout is removed language.*)

3. Lycoming County Orphans' Court Rules L14.1, L17.10 and L17.11 are hereby replaced in their entirety with identically numbered rules, that are set forth in the following.

4. The Clerk of the Orphans' Court is directed to:

a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order, and a disk containing the text of the local rule, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) certified copy of this order to the Pennsylvania Orphans' Court Procedural Rules Committee.

d. Forward one (1) copy of this order to the *Lycoming Reporter* for publication therein.

e. Forward one (1) copy to the chairman of the Lycoming County Customs and Rules Committee.

f. Keep continuously available for public inspection copies of this order.

5. The rule revisions approved by this order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

KENNETH D. BROWN,  
President Judge

### ACCOUNTS AND DISTRIBUTION

**L6.1. Form of Account.** *In addition to the requisites of the form of account of Pa.O.C. Rule 6.1, to facilitate preparation, the accountant may prefer to detail the starting balance by attaching a copy of the inventory as an exhibit. (This would be inappropriate if the inventory is prepared in a form that includes substantial extraneous material or does not list assets in an orderly manner.) The opening entry would then read:*

*"Assets Listed in Inventory per copy attached" (insert amount)*

~~A. In addition to the requisites of the form of the account of Pa.O.C. Rule 6.1, the account shall contain, at the beginning of the disbursement section, a subsection under the heading "ATTORNEY'S AND FIDUCIARY'S FEES, COMMISSIONS AND EXPENSES" which shall indicate separately the total amount of all disbursements which have been made for the purpose of paying attorney's fees and expenses and the total amount of all disbursements which have been made for the purpose of paying the fiduciary's fees or commissions and which have been made for the purpose of paying the fiduciary's expenses. This subsection shall be substantially in the form prescribed by Lyc. Co. O.C.R. L17.1.~~

~~B. Ledgers and Printouts.~~ Accountant's copies of ledgers and printouts may be used to state an account, if they are legible. If these contain abbreviations, code numbers or symbols, such abbreviations, code numbers and symbols shall be explained.

~~C. The periodic account required of an appointed guardian of the estate of an incapacitated person shall be substantially in the form prescribed by Lyc. Co. O.C.R. No. L17.13.~~

#### **L6.9. Statement of Proposed Distribution.**

A. Every fiduciary filing an account in which a distribution has been or is to be made shall file with the clerk a *verified* statement of proposed distribution substantially in the form prescribed by Lyc. Co. O.C.R. L17.4. When real estate is to be distributed, the description of said real estate shall be by metes and bounds when such a description is available.

B. When the fiduciary who files the account does not file a statement of proposed distribution, he or she shall request the appointment of an auditor. This request shall be by motion and shall be filed at the same time the account is filed. The court shall appoint an auditor to resolve issues of law and fact and to propose a distribution of the assets of the estate.

C. Notice of the filing of the statement of proposed distribution or the request for appointment of an auditor shall be given as prescribed by Lyc. Co. O.C.R. L6.3.

### **ESTATES OF INCAPACITATED PERSONS**

#### **L14.1. Incapacitated Persons**

A. Notice in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person is required on all persons who are sui juris and are heirs of the alleged or adjudicated incapacitated person, as defined by the intestacy laws of Pennsylvania. Such notice is required even if the person does not reside within the Commonwealth of Pennsylvania.

B. Notice required in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person, other than notice upon the alleged or adjudicated incapacitated person, shall be by personal

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

**C. Notice and Service.** The petition shall include a notice and citation as prescribed by the Pennsylvania Orphans' Court Rules. Petitioner shall be responsible for obtaining a completed notice and citation from the clerk, and petitioner shall be responsible for proper service of the petition, notice and citation. In all cases, service of the petition, notice and citation shall be made upon the alleged or adjudicated incapacitated person by personal service by the sheriff or by any other competent adult, and the person making such service shall read to the alleged or adjudicated incapacitated person the petition, notice and citation, and then for a second time the notice and citation. The person making service shall explain the contents to the extent possible.

**D. Service of emergency guardianship petition.**

(1) Service of emergency guardianship petition on incapacitated person. Petitioner shall serve the emergency guardianship petition in person on the alleged incapacitated person at least 48 hours prior to the emergency hearing and within 48 hours of the hearing date and time being scheduled. In the event there is not 48 hours between the time the hearing is scheduled and the hearing date and time, petitioner shall serve the emergency guardianship petition in person on the alleged incapacitated person within a reasonable amount of time prior to the emergency guardianship hearing. What is a reasonable amount of time shall depend upon the circumstances, such as the amount of time that exists between the time the hearing is scheduled and the actual hearing date. It shall be in the court's discretion to determine the timeliness of the service. Petitioner must offer evidence via affidavit and be prepared to present testimony to prove the reasonableness of the service.

(2) Service of emergency guardianship petition on sui juris, agents under a power of attorney, residential service providers, and other service providers. Petitioner shall serve the emergency guardianship petition on all persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time (even if the person does not reside within the Commonwealth of Pennsylvania), on the agents under the alleged incapacitated person's power of attorney, on the person or institution providing residential services to the alleged incapacitated person, and on such other parties as the court may direct, including other service providers, in any reasonable manner and within a reasonable amount of time prior to the emergency guardianship hearing. Any reasonable manner shall include service in person or by telephone, facsimile, mail, or electronic transmission depending upon the circumstances. However, service by telephone alone shall not be the favored method and shall be used only in circumstances where the other methods of service would not be timely. What is a reasonable amount of time shall depend upon the circumstances, such as the amount of time that exists between the time the hearing is scheduled and the actual hearing date. It shall be in the court's discretion to determine if the manner and timeliness of the service were reasonable. Petitioner must offer evidence via affidavit and be prepared to present testimony to prove that the manner and timeliness of the service were reasonable.

**E. Return of Service.** Petitioner is responsible for filing a return of service conforming to Pa.R.C.P. No. 405, which also confirms that the contents of the notice and citation of the petition were read and, to the extent possible, explained, to the respondent as set forth in paragraph C, above.

**F. Petition.** A petition for adjudication of incapacity and/or for appointment of a guardian of the estate of the person shall be substantially in the form prescribed by Lyc. Co. O.C.R. L17.9, and shall contain all the items of information referred to therein. Language used in the petition should be easily understood. It is recommended that an affidavit of a physician or clinical psychologist be attached which contains a description of the physical and mental condition, any functional limitations and whether or not the respondent would be harmed by attendance at the proceeding to determine incapacity.

**G. Status report on legal representation.** At least 14 days prior to the date established for hearing on the petition, petitioner shall file in duplicate a status report on legal representation, in substantially the form prescribed by Lyc. Co. O.C.R. L17.10, each of which should have attached, under the proper caption, the appropriate order, in substantially the form prescribed by Lyc. Co. O.C.R. L17.11.

**H. Proposed findings of fact.** Petitioner shall provide to the court, at or before hearing, proposed findings of fact in a form suitable for adoption by the court at hearing. Such findings shall include, inter alia, in separately numbered statements, at least the facts petitioner intends to establish which are required in order for the court to grant the relief requested.

**I. Periodic report of the guardian of the person.** Within one year of the date of appointment and annually thereafter, or with such greater frequency as the court may direct, every guardian of the person of an incapacitated person shall file a periodic report of the guardian of the person in substantially the form prescribed by the Pennsylvania Orphans' Court Rules. Notice and service of said report shall be in such manner as the court shall direct.

**J. Periodic report of the guardian of the estate.** Within one year of the date of appointment and annually thereafter, or with such greater frequency as the court may direct, every guardian of the estate of an incapacitated person shall file a periodic report of the guardian of the estate in substantially the form prescribed by the Pennsylvania Orphans' Court Rules. Notice and service of said report shall be in such manner as the court shall direct.

**K. Filing of emergency guardianship petition.** In all cases where an emergency guardianship petition is filed, a plenary petition shall be filed at the same time. Additionally, with the filing of the emergency and plenary petitions, petitioner shall file a motion cover sheet in accordance with Lyc. Co. O.C.R. L3.4. The motion cover sheet shall include within the order a rule to show cause as to why the alleged incapacitated person shall not be adjudicated capacitated. Petitioner shall serve the executed motion cover sheet on the alleged incapacitated person, counsel for the alleged incapacitated person, all persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time (even if the person does not reside within the Commonwealth of Pennsylvania), on the agents under the alleged incapacitated person's power of attorney, on the person or institution providing residen-

tial services to the alleged incapacitated person, and on such other parties as the court may direct, including other service providers. In the event petitioner determines that the plenary petition is not necessary, peti-

tioner shall file a verified statement explaining the reason for the lack of necessity of the plenary guardianship. The verified statement shall be substantially in the following form:

_____	)	<b>IN THE COURT OF COMMON PLEAS OF</b>
<b>IN THE MATTER OF</b>	)	<b>LYCOMING COUNTY, PENNSYLVANIA</b>
_____ ,	)	
<b>an alleged incapacitated person</b>	)	<b>ORPHANS' COURT DIVISION</b>
	)	
	)	<b>NO. _____</b>

**STATEMENT EXPLAINING REASON FOR LACK OF NECESSITY OF PLENARY GUARDIANSHIP**

I, \_\_\_\_\_, petitioner/counsel for petitioner in the above-referenced matter, hereby state, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that a plenary guardianship is not necessary for the following reason(s):

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

Respectfully submitted,  
Petitioner/Counsel for Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
[address]  
[telephone number]

**L17.4. Statement of Proposed Distribution.** The statement of proposed distribution required by Lyc. Co. O.C.R. L6.9 shall be substantially in the following form:

IN RE ESTATE OF:	:	IN THE COURT OF COMMON PLEAS OF
_____	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
Deceased	:	ORPHAN'S COURT DIVISION
	:	
	:	DOCKET NUMBER:

**STATEMENT OF PROPOSED DISTRIBUTION OF THE ESTATE OF**

filed by:

\_\_\_\_\_  
Fiduciary

\_\_\_\_\_  
Capacity

1. Date of death.
2. Indicate whether the decedent died testate or intestate and the date of probate of the decedent's last will and testament (if any).
3. Date of appointment of executor or administrator.
4. Set forth the name and address of the decedent's spouse.
  - (a) Indicate whether the spouse has elected to take against the will and if so, the date of the filing of the election:
  - (b) Indicate whether the decedent married after the execution of the will or codicils (if any) and which of the said will or codicils was executed prior to the marriage:
5. Set forth the names and addresses of the decedent's surviving issue or adopted children and indicate if any of

- them were born or adopted after the execution of the will (if any):
6. Set forth in list form the names of all legatees or in the case of an intestacy or partial intestacy, the names of the heirs at law and the addresses of the legatees and heirs (if not previously disclosed in 4 and 5 above). Also, set forth the relationship of the legatees or heirs to the decedent, the amount or percentage of the interest and the character of the interest. This information may be in summary form but should indicate whether any of the devises and bequests have been revoked, adeemed, lapsed or been assigned, attached or disclaimed:
  7. Set forth the names of all parties in interest who are under any legal disability and the names and addresses of their guardians or committees and the circumstances of the disability:
  8. Set forth the names and addresses of unpaid credi-

tors from whom the fiduciary has received written notice or of whom the fiduciary has actual notice. Also, set forth which of the amounts claimed are admitted:

9. Indicate whether or not charitable bequests are involved and if so, whether the Attorney General has been served with notice:

10. List any fiduciary capacity which the decedent held and indicate the present status and court docket number (if any):

11. Indicate whether the Pennsylvania transfer, inheritance and estate taxes have been paid in full. If so, in lieu of completing the schedule below a copy of notice of filing of appraisalment may be attached:

(a) State the Pennsylvania Department of Revenue appraisalment value of the estate, the amount of the debts and deductions allowed by the register of wills, and the value of the taxable estate:

Appraisalment Value \_\_\_\_\_  
 Less Debts and Deductions \_\_\_\_\_  
 Taxable Estate \_\_\_\_\_

(b) State the tax rate and the total amount of tax paid:

Tax Rate \_\_\_\_\_ %  
 Tax Paid \_\_\_\_\_

12. Indicate whether the estate is subject to the federal estate tax and the date of receipt of a federal estate tax closing letter (if it has been received). If the letter has not been received indicate that to the personal representative's information, knowledge and belief the federal estate taxes have been paid in full in accordance with the return filed:

13. Where the accountant is requesting that an issue be decided by an auditor or by the court, set forth any such issues:

14. Indicate whether a reserve is requested and, if so, state the amount and purpose thereof:

**The accountants propose to distribute the assets as follows:**

Name of Distributee	Asset to be Distributed	Inventory Value	Tax Basis Value

**Total Distribution Value** \_\_\_\_\_

\_\_\_\_\_  
 (Accountant)

\_\_\_\_\_  
 (Accountant)

IN RE ESTATE OF: \_\_\_\_\_ : IN THE COURT OF COMMON PLEAS OF  
 \_\_\_\_\_ : LYCOMING COUNTY, PENNSYLVANIA  
 \_\_\_\_\_ :  
 Deceased : ORPHAN'S COURT DIVISION  
 \_\_\_\_\_ :  
 \_\_\_\_\_ : DOCKET NUMBER:

**AFFIDAVIT OF INDIVIDUAL FIDUCIARY(IES)**

\_\_\_\_\_, the within named fiduciary(ies) verify(ies) that the facts set forth in the foregoing account and statement of proposed distribution, which are within the personal knowledge of the fiduciary(ies), are true, and as to facts based on information of the others, the fiduciary(ies), after diligent inquiry, believe(s) them to be true. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
 Signature(s) of Individual  
 Fiduciary(ies)

Date: \_\_\_\_\_

\* \* \* \* \*

IN RE ESTATE OF: : IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:   
Deceased : ORPHAN'S COURT DIVISION  
:   
: DOCKET NUMBER:

**AFFIDAVIT OF OFFICER OF CORPORATE FIDUCIARY**

\_\_\_\_\_ verifies that he is the \_\_\_\_\_ of the above named \_\_\_\_\_, and that the facts set forth in the foregoing account and statement of proposed distribution which are within the personal knowledge of the affiant are true, and as to facts based on the information of others, the affiant, after diligent inquiry, believes them to be true. I understand that false statements therein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Signature of Officer of  
Corporate Fiduciary

Date: \_\_\_\_\_

**NOTE:** The statement of proposed distribution is to be verified using the forms set forth in the Pennsylvania Orphans' Court Rules.

IN RE ESTATE OF: : IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:   
Deceased : ORPHAN'S COURT DIVISION  
:   
: DOCKET NUMBER:

**AFFIDAVIT VERIFICATION OF NOTICE**

\_\_\_\_\_  
(Fiduciary), \_\_\_\_\_ (Capacity) of the Estate of \_\_\_\_\_, verifies that written notice by \_\_\_\_\_ (state method of service of notice) was given of the filing of the [Account and Statement of Proposed Distribution/Account and Request for the Appointment of an Auditor] to every unpaid claimant who has given written notice of his claim to the accountant and to every person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir or next of kin. Copies of said written notices are attached. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Fiduciary or Officer of  
Corporate Fiduciary

Date: \_\_\_\_\_

**L17.9. The Petition to Adjudicate Incapacity and for the Appointment of a Guardian.** The petition to adjudicate incapacity and for the appointment of a guardian referred to in Lyc. Co. O.C.R. L14.1A F shall be substantially in the following form: [ **The form is unchanged.** ]

**L17.10.** The status report on legal representation referred to in Lyc. Co. O.C.R. L14.1G shall be substantially in the following form:

IN THE MATTER OF ) IN THE COURT OF COMMON PLEAS OF  
 ) LYCOMING COUNTY, PENNSYLVANIA  
\_\_\_\_\_, )  
an alleged incapacitated person )  
 ) ORPHANS' COURT DIVISION  
 )  
 ) NO. \_\_\_\_\_

**STATUS OF ALLEGED INCAPACITATED PERSON'S LEGAL REPRESENTATIVE**

6. The Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate in the above-referenced matter was filed with this Honorable Court on \_\_\_\_\_ [date] (or is being filed herewith).

7. Service of the Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate was served on the alleged incapacitated person on \_\_\_\_\_ [date] (or has not been served to date).

8. The Hearing on the Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate has been scheduled for \_\_\_\_\_ [date] (or has not been scheduled yet).

9. Counsel for the alleged incapacitated person (is) (is believed to be): [name, address, and telephone number] or Petitioner does not believe that the alleged incapacitated person is represented by counsel.

10. According to Petitioner's knowledge and belief, the assets of the alleged incapacitated person consist of approximately \$ \_\_\_\_\_ .

11. Petitioner requests that counsel for the alleged incapacitated person be appointed by this Honorable Court and pursuant to 20 Pa.C.S. § 5511(c), be compensated by Lycoming County or Petitioner requests that counsel for the alleged incapacitated person be appointed by this Honorable Court and that counsel for the alleged incapacitated person not be compensated by Lycoming County.

Respectfully submitted,  
Petitioner/Counsel for Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
[address]  
[telephone number]

**L17.11.** The proposed order referred to in Lyc. Co. O.C.R. L14.1G shall be substantially in the following form:

IN THE MATTER OF	)	IN THE COURT OF COMMON PLEAS OF
_____ ,	)	LYCOMING COUNTY, PENNSYLVANIA
an alleged incapacitated person	)	
	)	ORPHANS' COURT DIVISION
	)	
	)	NO. _____

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of the attached status report, \_\_\_\_\_ is hereby appointed as counsel for the alleged incapacitated person. Counsel for the alleged incapacitated person \_\_\_\_\_ shall/ \_\_\_\_\_ shall not be compensated by Lycoming County. A certified copy of this order shall be served on the alleged incapacitated person, counsel for the alleged incapacitated person, and all persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time.

BY THE COURT:

\_\_\_\_\_  
J.

[Pa.B. Doc. No. 08-1745. Filed for public inspection September 26, 2008, 9:00 a.m.]

\_\_\_\_\_