

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

ORPHANS' COURT # 1506-9999

O R D E R

AND NOW, this 5th day of OCTOBER, 2006, the attached Rules of the Orphans' Court Division of the Court of Common Pleas of Chester County, Pennsylvania, are hereby adopted, effective December 1, 2006.

BY THE COURT:

PAULA FRANCISCO OTT President Judge

KATHERINE B. L. PLATT Judge

RULES OF ORPHANS' COURT PROCEDURE OF THE COURT
OF COMMON PLEAS OF CHESTER COUNTY
Integrated with
Supreme Court Orphans' Court Rules
(State Rules Appear in Bold Type, Local Rules in Regular Type)

Judges-Local Rules

Rule 1.1. Powers of Judges

Any judge of an Orphans' Court Division, whether or not it consists of more than one judge, may hear and determine all matters, jurisdiction of which is exercised through the Orphans' Court Division.

Rule 1.2. Local Rules

The Orphans' Court of the several judicial districts of this Commonwealth may adopt local rules regulating practice and procedure, but such rules shall not be inconsistent with any rule adopted by the Supreme Court of this Commonwealth or any Act of Assembly regulating the practice and procedure in the Orphans' Courts of this Commonwealth.

Rule L1.2A. Index of Proceedings

The Clerk shall assign to each new matter a file number, starting with Number 1 at the beginning of each calendar year. The file number and the name of the matter shall be included in the caption of all papers filed in Court or in the Clerk's office.

Rule L1.2B. Arguments

In all cases, argument shall be heard at the conclusion of the hearing unless leave of Court is obtained prior thereto.

(1) Other matters for argument shall be heard as scheduled by the Court.

(2) Notice and Briefs - With respect to arguments other than those heard at the conclusion of a hearing, counsel obtaining the argument date shall give opposing counsel at least fifteen (15) days notice of said argument date and shall furnish opposing counsel with a brief at least fifteen (15) days prior to the argument. Reply briefs shall be furnished at least five (5) days prior to the argument. For failure to provide a brief at the proper time, sanctions may be fixed by the Court, including refusing to receive a brief and hear oral argument from the offending attorney. If either counsel fails to appear at the argument, the case may proceed ex parte.

Rule L1.2C. Attorney's Entry and Withdrawal of Appearance

(1) Every attorney participating in any proceeding shall enter an appearance by written order or by endorsement on papers filed.

(2) An attorney may not withdraw an appearance without leave of court unless another attorney has previously entered or another attorney is simultaneously entering an appearance on behalf of the party.

(3) Leave of court to withdraw appearance shall be sought by petition with notice as set forth under Rule 3.4 et sec.

Rule L1.2D. Trust Inter Vivos

The original trust instrument and any amendments thereto, shall be filed with the Clerk when the Court is first required to exercise its jurisdiction over the inter vivos trust. The instrument shall be indexed and recorded by the Clerk. Any revocation shall be likewise filed, indexed and recorded. The rules of court applicable to testamentary trusts shall apply to trusts inter vivos as far as appropriate. In the event such instrument has been filed with another court, a certified copy thereof will be accepted in lieu of the original. All original instruments lodged with the Clerk shall be microfilmed and then returned.

Rule L1.2E. Sureties

(1) Individual Sureties - Individuals proposed as sureties on bonds of fiduciaries shall take an affidavit on the printed form supplied by the Clerk, setting forth the facts required thereby. Such affidavit shall be filed together with the bond when filed, and shall be renewed annually thereafter so long as the bond shall remain in effect. A member of the Bar or any employee of this Court shall not act as surety in any proceeding in this Court, except by special leave of Court.

(2) Corporate Sureties - Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in this Court; provided that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, shall be on file with the Clerk, and that no bond shall be executed by any surety company after May 1 of any year until such a certificate issued after March 31 of the same year has been filed with the Clerk.

Rule L1.2F. Corporate Fiduciaries

(1) Corporations having fiduciary powers and authorized to do business in the Commonwealth may act as fiduciaries in matters pending in this Court; provided, however, that initially there shall be filed with the Clerk a copy of the certificate issued by the State Banking Department, the Comptroller of Currency, or the Federal Reserve Board, as the case may be, evidencing its right to exercise fiduciary powers, certified to be true and correct by an executive officer of the corporation. Thereafter, on or before the first day of May of each year such corporation shall file a statement, verified by the oath or affirmation of an executive officer thereof, that it continues to be qualified to act in such capacity.

(2) Except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

Rule L1.2G. Committee on Rules

(1) Whenever the Court deems it necessary, it shall appoint a rules committee for the Orphans' Court of Chester County, which shall consist of at least six attorneys who are members of the Bar of Chester County, the Orphans' Court Administrator, the Clerk of the Orphans' Court,

and any other person(s) designated by the Court. The committee shall serve at the pleasure of the Court.

(2) It shall be the duty of said committee on rules to inform themselves as to legislation, as to procedural rules promulgated by the Supreme Court, and as to decisions of the courts in any way affecting the existing rules and, from time to time, to suggest to the Court such modifications or additions to the rules of said Court as in their judgment or the judgment of the majority thereof may be necessary or advisable.

Rule L1.2H. Notices of Order, Decree or Adjudication

In any Orphans' Court proceeding, the Clerk shall immediately give written notice by ordinary mail or personal delivery of the entry of any order, decree or adjudication to each party's attorney of record, or if unrepresented, to each party. Notice shall include a copy of the order, decree, or adjudication unless a bond is required, then no copy is provided until bond is posted. The clerk shall note in the docket the mailing or delivery of the required notice and documents.

Rule L1.2I. Reproduction of Papers

All pleadings and papers filed with either the Register or the Clerk shall be legible. Should any such pleading or paper not be sufficiently legible for mechanical reproduction, the Register or the Clerk may refuse to receive such pleading or paper or may require that a legible copy thereof be submitted for mechanical reproduction.

Construction and Application of Rules

Rule 2.1. Construction of Rules

The rules adopted by the Supreme Court regulating the practice and procedure of the Orphans' Courts of this Commonwealth, and the rules adopted by such courts, shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

Rule 2.2. Waiver of Time Limitation

The Court, upon its own or the motion of any party, may extend any limitation of time prescribed by these rules.

Rule 2.3. Definitions

The following words when used in these rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this rule:

"Clerk" means the Clerk of the Orphans' Court Division.

"Court," "Orphans' Court" or "Orphans' Court Division" means the Orphans' Court Division of the Court of Common Pleas, or any judge thereof, having jurisdiction.

"Electronic Filing" means the electronic transmission via the internet of legal papers to the Clerk of the Orphans' Court Division.

"Fiduciary" includes executors, administrators, guardians, agents acting under a power of attorney and trustees whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans' Court Division.

"Filing party" means a party or an attorney acting on behalf of a party who files a legal paper by means of electronic filing.

"Legal paper" means a petition, pleading, or other document.

"Register of Wills" or "Register" means the Register of Wills having jurisdiction.

Rule L2.3A. Definitions

(1) "Common Pleas" means the Court of Common Pleas of Chester County.

(2) "Code" means the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §101 et seq.), as amended.

(3) "Interested parties" means persons having either a legal or a beneficial interest in the matter in question, unless the context indicates otherwise.

(4) "Supreme Court Rules" means Rules of the Orphans' Court promulgated by the Supreme Court of Pennsylvania.

Pleading and Practice

Rule 3.1. Conformity to Equity Practice in General

Except where otherwise provided by a rule adopted by the Supreme Court, or by an Act of Assembly, or by general rule or special order of the local Orphans' Court, and except for the Notice to Defend required by Rule of Civil Procedure 1018.1, which form of notice shall be required only if directed by general rule or special order of the local Orphans' Court, the pleading and practice shall conform to the pleading and practice in equity in the local Court of Common Pleas.

Rule L3.1A. Pretrial Conference

In any action the Court, on its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

- (1) The simplification of the issues.
- (2) The necessity or desirability of pleadings and/or amendments thereto.
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

- (4) The limitation of the number of expert witnesses.
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury.
- (6) Such other matters as may aid in the disposition of the action.

Rule 3.2. Petition, Answer and Reply

(a) On or before the return day fixed in the citation or order, and in all other cases within twenty (20) days after service upon him of a copy of any petition, a party opposing the granting of the prayer of the petition shall file an answer admitting or denying the averments of fact of the petition and specifically stating his objections thereto and averring the facts relied upon by him.

(b) Within twenty (20) days after service upon him of a copy of an answer, a petitioner may file a reply thereto and admit, deny or avoid the facts averred in the answer.

Rule L3.2A Pleadings

The pleadings in the Orphans' Court shall be limited to a petition, an answer, including new matter, a reply, preliminary objections and an answer to preliminary objections.

Rule 3.3. Averment of Incapacity

Whenever the name of a person must be set forth in a pleading or statement of proposed distribution and such person is not sui juris, that fact shall be set forth, together with the name and address of the guardian, trustee or other representative of such person, if any. If the person not sui juris is a minor who has no guardian of his estate, the minor's age, the name and address of his parents and of the person with whom he resides shall also be set forth.

Rule 3.4. Form of Petition, Exhibits, Consents

(a) A petition shall set forth:

- (1) the caption;**
- (2) a heading indicating briefly the purpose of the petition;**
- (3) a concise statement of the facts relied upon to justify the relief desired, together with the citation of any Act of Assembly relied upon; and,**
- (4) a prayer for the relief desired.**

(b) The petitioner shall attach to the petition:

- (1) a form of decree; and**

(2) such exhibits, consents or approvals as may be required by Act of Assembly or by local rule.

(c) If the petitioner is unable to attach any necessary exhibit, consent or approval, he shall so state in his petition, together with the reason for his inability.

Rule L3.4A. Form, Additional Requirements

(1) Typing and Endorsement - Every petition, answer and reply shall be typewritten or printed, and shall be endorsed on the front upper left hand corner with the name, address, zip code, telephone number, and identification number of the individual attorney representing the party filing the pleading, or of the party if proceeding pro se.

(2) Signature and Verification - Every petition, answer and reply shall be signed by the parties and verified by one or more of them. If this is impracticable, it may be signed and verified by someone other than counsel familiar with the facts, in which case the reason for the failure of the parties to sign shall be set forth.

(3) Decree - The decree shall have a caption and be attached to the face of the petition.

(4) Preliminary Decree - A Petition shall be accompanied by a separate Preliminary Decree for the Court's use either setting a hearing date in those instances where there exists jurisdiction or issuing a citation returnable with hearing where the Court has not yet taken jurisdiction.

(5) Paper - Every petition, answer and reply shall be stated upon paper 8 ½ inches by 11 inches in size, the paper to be fastened together securely at the top and numbered consecutively at the bottom.

(6) Courtesy copy - Parties shall not send courtesy copies of pleading to the Court without the specific request of the Court for same.

Rule 3.5. Mode of Proceeding on Petition

Proceeding on petition shall be by citation to be awarded by the Court upon application of petition in any case where jurisdiction over the person of the respondent is required and has not previously been obtained. In all other cases, proceedings on petition shall be by notice. In either event a copy of the petition shall be served with the citation or notice unless service thereof is made by publication. Neither a citation nor notice shall be required where all parties in interest are the petitioners or their consents or joinders are attached.

Rule 3.6. Depositions, Discovery, Production of Documents and Perpetuation of Testimony

The local Orphans' Court, by general rule or special order, may prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony. To the extent not provided for by such general rules or special order, the

practice relating to such matters shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.

Rule L3.6A. Discovery

In Orphans' Court cases where any or all of the parties are seeking discovery, Court approval must be obtained prior to the taking of depositions, perpetuating testimony, or compelling the production of documents

In matters where all parties are in agreement as to discovery, a written stipulation must be filed with the Court prior to the commencement of discovery. The stipulation must be signed by all parties or their counsel and must provide specific stipulations as to the nature and extent of the discovery as well as a timetable for completion of the discovery. The stipulation must be submitted for Court approval within a reasonable time prior to the proposed commencement of discovery.

Adopted December 19, 2007, effective February 11, 2008.

Rule 3.7 Electronic Filing and Service of Legal Papers

(a) Authorization for electronic Filing.

(1) A local Orphans' Court may permit or require electronic filing of legal papers. Any Court which implements electronic filing shall establish procedures governing such filing by local rule which shall be consistent with the procedures set forth herein.

(2) This rule does not mandate the implementation of electronic filing by a local Orphans' Court.

(b) Electronic Filing of Legal Paper.

(1) A filing party may file a legal paper with the Clerk by means of electronic filing.

(2) Legal papers and exhibits shall be filed in portable document format (pdf).

(3) Exhibits to a legal paper shall be converted to portable document format (pdf) by scanning or other method.

(4) Any party may require the filing party to file the original or a hard copy of a legal paper or exhibit by filing a notice to file with the clerk and serving a copy of the notice upon the filing party. The filing party shall file the specified document with the Clerk within fourteen days after service of the notice. Upon disposition of the matter before the Court, an original document may be returned to the party who filed it, or retained by the Court, as the Court may determine.

(c) Signature, Verification and Retention of Legal Paper.

(1) The original legal paper shall be properly signed, and where required, verified.

(2) The electronic filing of a legal paper constitutes a certification by the filing party that the original document was signed, and where applicable, verified.

(3) Unless retained by the Court, the filing party shall maintain the original of all documents so certified, together with any exhibits filed, for five years after the later of:

(i) the disposition of the case;

(ii) the entry of an order resolving the issue raised by the legal paper; or

(iii) the disposition by an appellate court of the issue raised by the legal paper.

(d) Website and Filing Date.

(1) The Court shall designate a website for the electronic filing of legal papers. A user name and password shall be issued to authorized users.

(2) the Court shall provide electronic filing access at all times. The time and date of the filing shall be that registered by the Court's computer system.

(3) the Court shall provide, through its website, an acknowledgement that the filing has been processed. Such acknowledgement shall include the date and time of filing in a form which can be printed for retention by the filing party.

(e) Delay in Filing – A filing party shall be responsible for any delay, disruption, or interruption of electronic transmission, and for the legibility of the document electronically filed, except for delays caused by the failure of the Court's website. The filing party may petition the Court to resolve any dispute concerning an alleged failure of the Court's website.

(f) Fees.

(1) A filing party shall pay the fee for electronically filing a legal paper as provided by the Court.

(2) The Court may assess an additional automation fee for each legal paper electronically filed which shall be used for the development, implementation, maintenance, and training in the use of the Orphans' Court electronic filing system, and other related uses.

(g) Local Procedures – The Court may develop further administrative procedures, as needed, to implement this rule and to provide for security of the electronic filing system, as required by changing technology.

(h) Service of Legal Papers by Parties.

(1) Service of original process shall not be permitted by electronic means, unless agreed to by the respondent.

(2) Service of subsequent legal papers may be effected by electronic transmission if the parties agree, or if an electronic mail address appears on an entry of appearance, or other legal paper previously filed with the Court in the action. Electronic service is complete when the legal paper is sent to the recipient's electronic mail address, or when the recipient is notified by electronic mail that a legal paper affecting the recipient has been filed and is available for review on the Court's website.

(i) Notices – The Clerk and the Court may serve all notices via electronic means.

Computation of Time

Rule 4.1. Generally

(a) When any period of time is referred to in any rule, such period in all cases, except as otherwise provided in Rules 2 and 3 of this Section, shall be so computed as to exclude the first and include the last day of such period.

(b) Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

Rule 4.2. Publication for Successive Weeks

Whenever in any rule or Act of Assembly providing for the publishing of notices, the phrase "successive weeks" is used, weeks shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in "successive weeks" shall elapse between the first publication and the day for the happening of the event for which publication shall be made.

Rule 4.3. Computation of Months

Whenever in any rule or Act of Assembly the lapse of a number of months after or before a certain day is required, such number of months shall be computed by counting the months from such day excluding the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there are not so many days in the last month so counted, in which case the period computed shall expire with the last day of such month.

Notice

Rule 5.1. Method

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, whenever notice is to be given a person, it shall be given:

- (a) by service upon the attorney appearing of record for such person; or**
- (b) if there is no such attorney, by personal service, delivery at the residence of such person or by mail, if his residence is known; or**
- (c) if his residence is not known, by publication once a week during three successive calendar weeks in the legal periodical, if any, and in a newspaper of general circulation published at or near his last known residence within the county;**
- (d) in such other manner as the Court shall direct.**

Rule L5.1A. Method. Legal Publication

The Chester County Law Reporter shall be the legal periodical for the publication of notices whenever publication in a legal periodical is required by Act of Assembly, or by rule or order of Court.

Rule L5.1B. Method. Public Sale of Real Property

Notice of the public sale of real property shall be given:

- (1) By advertisement once a week for three (3) successive weeks in the Chester County Law Reporter and in one other newspaper of general circulation in Chester County;**
- (2) By posting a notice on the premises;**
- (3) By personal notice or registered or certified mail to all parties in interest of the time and place of the proposed sale at least ten days prior thereto; and,**
- (4) By such other notice as the Court may by special order direct.**

Rule L5.1C. Method. Private Sale of Real Property

Notice of the private sale of real property shall be given in such manner as provided by a rule adopted by the Supreme Court or by an Act of Assembly, or by general rule or special order of this Court.

Rule L5.1D. Written Notice

Written notice, served personally on an attorney of record, to the person for the time being in charge of the attorney's office, or by mail addressed to the attorney's office, shall be notice to the party whom the attorney represents, except where personal service on the party is specifically required.

Rule 5.2. Method. Person Under Incapacity

Whenever notice is to be given a person who is not sui juris, notice shall be given to his guardian or trustee, but if there is no such guardian or trustee, notice shall be given in such manner as the Court by general rule or special order shall direct. The return of such notice or an averment of such notice in a pleading shall set forth the incapacity of the person who is not sui juris and the name and address of his representative or other person who has been notified on his behalf.

Rule 5.3. Time for Notice

Whenever notice of the intention to do any act is required such notice shall be given at least ten days prior to the doing of the act, unless a different period is specified by a rule adopted by the Supreme Court or by an Act of Assembly.

Rule 5.4. Return of Notice

Return of notice shall be by affidavit of the person serving, mailing, publishing or delivering such notice.

Rule L5.4A. Return of Notice. Additional Requirement

- (1) Copy of Notice - A copy of all petitions, notices, preliminary decrees or other papers served shall be attached to the return of notice.
- (2) Personal Service - Return of personal service of notice shall set forth the date, time, place and manner of service and that a true and correct copy of the notice was handed to the person served.
- (3) Registered or Certified Mail - Return of notice by registered or certified mail shall state the date and place of mailing and shall include the return receipt, or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowledge, or has cause to believe, that such notice was not received by the person to be notified, the person giving notice shall so state in the return. When the address of the person given notice by registered or certified mail is in a country other than the United States of America, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

Rule 5.5. Charities; Notice to the Attorney General

In every proceeding in the Orphans' Court involving or affecting a charitable interest with the exception hereinafter set forth, at least fifteen days advance written notice thereof shall be given to the Attorney General of the Commonwealth of Pennsylvania at his principal office at Harrisburg, Pennsylvania, or to a deputy of him whom he shall have designated for such purpose for the judicial district in which the proceeding is pending. The notice shall include or be accompanied by such of the following as may be appropriate:

- (a) the caption of the case;
- (b) a description of the nature of the proceeding;

(c) the date, time and place when the matter is to be heard by the Court to the extent then known;

(d) the name of the decedent, settlor, incompetent or minor, if not disclosed by the caption;

(e) a copy of the will or other instrument creating the charitable interest;

(f) the name and address of any specific charity which may be affected by the proceeding;

(g) if the charitable interest is a present interest, a description and the approximate market value of that interest;

(h) if the charitable interest is a future interest and the estimated present value of the property involved exceeds \$25,000, a brief description thereof including the conditions precedent to its vesting in enjoyment and possession, the names and ages of persons known to have interests preceding such charitable interest, and the approximate market value of the property involved;

(i) a description of any unresolved claim and any material question of interpretation or distribution likely to be submitted for adjudication which may affect the value of the charitable interest;

(j) the names and addresses of all fiduciaries;

(k) the name and address of counsel for the fiduciary; and

(l) the name and address of counsel for any charity who has received notice or has appeared for it and the name of the charity which he represents.

Proof of service of the above notice by registered or certified mail or an acknowledgment of such notice received from the Attorney General or his deputy shall be filed of record in every proceeding involving a charitable interest prior to the entry of any decree.

Unless the Orphans' Court directs otherwise by local rule adopted after the effective date hereof, no notice to the Attorney General or his designated deputy shall be required with respect to a pecuniary legacy to a charity in the amount of \$25,000 or less which has been or will be paid in full.

Rule 5.6. Notice to Beneficiaries and Intestate Heirs

(a) Requirement of Notice - Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or his counsel shall send a written notice in substantially the form set forth in Rule 5.7 to:

(1) every person, corporation, association, entity or other party named in decedent's will as an outright beneficiary whether individually or as a class member;

(2) the decedent's spouse and children, whether or not they are named in, or have an interest under, the will;

(3) where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir under Chapter 21 of the Probate, Estate and fiduciaries Code;

(4) the appointed guardian of the estate, parent or legal custodian of any beneficiary who is a minor child under the age of eighteen (18) years;

(5) the appointed guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated incapacitated person;

(6) the Attorney General on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;

(7) the Attorney General on behalf of any governmental beneficiary;

(8) the trustee of any trust which is a beneficiary; and

(9) such other persons and in such manner as may be required by any local rule of court.

(b) Definition of Beneficiary. "Beneficiary" shall be deemed to include any person who may have an interest by virtue of the Pennsylvania anti-lapse statute, 20 Pa.C.S. §2514.

(c) Manner of Notice. Notice shall be given by personal service or by first-class, prepaid mail to each person and entity entitled to notice under subdivision (a)(1)-(9) whose address is known or reasonably available to the personal representative.

(d) Certification of Notice. Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the personal representative or the personal representative's counsel shall file with the Register or Clerk a certification in the form set forth in Rule 5.7(b) that notice has been given as required by this Rule. No fee shall be charged by the Register or Clerk for filing the certification required by this subdivision.

(e) Failure to File Certification. Upon the failure by the personal representative or the personal representative's counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent personal representative and his counsel, notify the Court of such delinquency.

(f) Effect of Notice. This Rule shall not alter, diminish or confer existing rights.

(g) Copies of Rule. The Register shall deliver a copy of Rules 5.6 and 5.7 to each personal representative and counsel at the time letters are granted.

Rule 5.7. Form of Notice and Certification of Notice to Beneficiaries and Intestate Heirs

(a) Form of Notice to Beneficiaries and Intestate Heirs

IMPORTANT NOTICE

NOTICE OF ESTATE ADMINISTRATION

THIS NOTICE DOES NOT MEAN THAT YOU WILL RECEIVE ANY MONEY OR PROPERTY FROM THIS ESTATE OR OTHERWISE

Whether you will receive any money or property will be determined wholly or partly by the decedent's will. If the decedent dies without a will, whether you will receive any money or property will be determined by the intestacy laws of Pennsylvania.

BEFORE THE REGISTER OF WILLS

COUNTY OF _____, PENNSYLVANIA

In re Estate of _____, deceased, _____

No. _____ of _____

TO: _____

(Name and Address)

Please take notice of the death of decedent and the grant of letters to the personal representative(s) named below.

The Decedent _____, died on the day of _____, 20 __, at _____ County, Pennsylvania.

The Decedent died testate (with a Will); or
The Decedent died intestate (without a Will).

The personal representative of the Decedent is

(name, address and telephone number).

If the Decedent died testate, the will has been filed with the Office of the Register of Wills of _____ County (address and telephone number).

If the Decedent died intestate, a Petition for the Grant of Letters of Administration was filed with the Office of the Register of Wills of County (address and phone number).

(a) The dates of all receipts and disbursements, the sources of the receipts, and the persons to whom disbursements are made and the purpose thereof shall be stated except that where a number of payments have been received from the same source or disbursed to the same recipient for the same purpose over a period of time, such receipts or disbursements need not be itemized but may be stated in total amounts only with dates of beginning and ending of the period covered.

(b) Except where otherwise provided by a special order of the local Court in a particular case, items of administration, distribution, receipts, disbursements, principal, and income shall be separately stated.

(c) Assets held by the accountant on the date of filing the account shall be separately itemized.

(d) Testamentary assets shall be segregated from appointive assets.

(e) Each local Court may adopt further rules not inconsistent with the foregoing regulating the form of accounts.

(f) Accounts may be prepared and filed in substantial conformity with either (i) the rules prescribed or forms approved by the local Court or (ii) any form approved by the Supreme Court of this Commonwealth - whichever the accountant may elect.

(g) The Uniform Fiduciary Accounting Principles and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts are approved as an elaboration of the requirements of this Rule. Reference may be made to them for determination of the adequacy of a particular account. The model Account formats attached thereto are the approved forms for purposes of paragraph (f)(ii) of this Rule in lieu of all forms heretofore approved.

Rule L6.1A. Form. Additional Requirements

(1) Form in General - Accounts shall be prepared in substantial conformity with forms approved by the Supreme Court of Pennsylvania.

(2) Paper - Accounts shall be stated upon paper 8 1/2 inches by 11 inches in size, the pages to be fastened together securely at the top, not stapled or sealed, and numbered consecutively at the bottom.

(3) An account shall have attached thereto a petition for adjudication and statement of proposed distribution.

(4) Accounts must conform to any additional requirements shown on accounts checklists which are available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills.

(5) Accounts not conforming to all requirements by the call of the audit list will be deferred.

Rule L6.1B. Execution

(1) Signing - Accounts shall be signed by ALL fiduciaries stating them. In the case where the fiduciary has died, the account shall be executed by her or his personal representative, or counsel shall notify the Court that no personal representative has been appointed.

(2) Affidavit - Accounts shall have attached to the end thereof the affidavit of one or more of the fiduciaries joining in the account.

(3) Certification by Attorney - At the end of each account there shall appear a certification by the attorney representing the accountant, that the attorney has reviewed the account and finds it to be in conformity with these Rules.

Rule L6.1C. Appointed Estates

Assets appointed by the donee of a testamentary power and which must be accounted for by the fiduciary of the donee, shall be identified and shall be shown in a separate schedule.

Rule L6.1D. Annexed Accounts

A guardian, personal representative or trustee who has received property from a guardian, personal representative or trustee in distribution of another estate or trust may annex a copy of the account of said estate or trust to his or her account. Notice must be given to all interested parties of the annexation.

Rule 6.2. Form. Separate Accounts for Minors

Unless the Court upon cause shown directs otherwise, a separate account shall be filed for the estate of each minor.

Rule 6.3. Notice to Parties in Interest

No account shall be confirmed unless the accountant has given written notice of the filing of the account and the call thereof for audit or confirmation to every unpaid claimant who has given written notice of his claim to the accountant and to every other person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir or next of kin.

The notice shall state the date, time and place of the audit to the extent then known; shall also state the last day to file objections to the account in counties where the local rules require written objections; and shall include a copy of the statement of proposed distribution in counties where accounts are not audited in open court.

Rule L6.3A. Contents of Notice

Notices shall comply with Supreme Court Rule 6.3 and the following requirements:

(1) Written notice of (i) the filing of the account and petition for adjudication and (ii) the time and place of audit shall be given to all parties in interest who are entitled to notice of the filing of the account as set forth in Rule 6.3.

(2) In those instances where any claim or interest of the party being notified is contested or will not be paid in full, the aforesaid written notice shall so state and shall further state that a written claim or written objections must be filed at or prior to the audit by the party who desires to pursue any such claim or interest.

(3) In those instances where there exists any fairly disputable issue or question, including a question of interpretation, known to or reasonably ascertainable by the accountant or the accountant's counsel; the aforesaid written notice to all parties in interest affected thereby shall (i) state the issue and the conclusion of the accountant with regard thereto, and (ii) have attached thereto a copy of the instrument or material parts thereof containing any provision which forms the basis of the dispute or question, and (iii) state that if the person notified does not agree with the accountant's conclusion, that person must, at or prior to the audit, file a written objection to the petition for adjudication, under penalty for failure to object that the Court will assume that said person agrees with the accountant's conclusion.

Rule L6.3B. Enclosures

(1) A recipient of a pecuniary bequest, specific legacy or devise or demonstrative legacy shall be given notice of the provision pertaining to such beneficiary.

(2) All other beneficiaries or heirs shall be given a copy of the account, the petition for adjudication and a statement of proposed distribution, the will or trust instrument, or relevant portions thereof, unless counsel or the accountant certifies that a copy was previously furnished, and the inventory.

(3) No copy of any of the above need be given anyone who has executed a satisfaction of award or a written waiver of their right to receive such information.

Rule L6.3C. Time of Notices

Notices shall be mailed no later than ten days after filing an account. Notices mailed prior to filing an account shall state the date upon which the account is expected to be filed.

Rule L6.3D. Copy of Notice

Prior to the audit, the accountant shall cause to be filed an affidavit indicating the form of notice sent to the parties in interest and to whom such notice was sent. The certificate from the Attorney General shall be attached if notice concerning a charity is required by Supreme Court Rule 5.5.

Rule L6.3E. Special Requirements for Notice

If notice is required to be given to a personal representative or fiduciary, such notice shall also be given to the beneficiaries of the trust or estate. If notice is required to be given to a minor of whom no guardian or guardian ad litem has been appointed, it shall be sufficient to give notice to the minor's parent, or to the minor's attorney, if any.

Rule 6.4. Time for Filing

The first account of a personal representative shall not be filed until four months have elapsed from the date of the first complete advertisement of the original grant of letters, unless the personal representative has been directed by the Court to file an account prior to that time.

Rule L6.4A. Audits

Audit List-When Called - The audit list will be called on the first Wednesday of every month except January and July. There will be no audit list in January and July. Each audit list shall include continued accounts and new accounts eligible for audit. No attorney need be present unless the attorney desires to file written objections or a claim.

Rule L6.4B. For a Particular Audit

Accounts to appear on a particular list must be filed not later than 4:30 p.m. on the 4th Wednesday preceding the session of Court when the audit list will be called, except when the day falls on a holiday, in which event accounts must be filed as per the Court calendar for that year.

Rule 6.5. Repealed by Order of April 30, 1992, imd. effective

Rule 6.6. Filing with the Clerk of the Orphans' Court

Fiduciaries accounts. The account of a personal representative, trustee, guardian of the estate of a minor or incompetent and custodian under the Uniform Gifts to Minors Act shall be filed with the Clerk of the Orphans' Court.

Rule 6.7. Filing Copy With the Department of Revenue

A copy of every account filed by the fiduciary of the estate of a deceased person who was an inmate of a State-owned mental hospital or a home, asylum or other institution, wherein said inmate was maintained in part by the Commonwealth, shall be filed with the Department of Revenue.

Rule 6.8. Filing Copy With the United States Veterans' Administration

A copy of every account filed by the fiduciary of the estate of a veteran of any war or of the estate of a minor child of such veteran, to which veteran or minor benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Administration or its successor, shall be filed with the United States Veterans' Administration or its successor.

Rule 6.9. Statement of Proposed Distribution

(a) A fiduciary filing an account shall file a statement of proposed distribution or, as local rules may prescribe, a request that distribution be determined by the Court or an auditor.

(b) The statement of proposed distribution shall be filed at such place and time, shall be in such form and shall be accompanied by such papers, and shall be advertised or such notice thereof shall be given as local rules shall prescribe.

Rule L6.9A. Petition for Adjudication and Statement of Proposed Distribution

(1) Recital of Facts - At the time of filing an account, the accountant shall attach thereto a petition for adjudication setting forth all facts necessary to enter a proper decree.

(2) Form of Petition - The petition for adjudication shall be on the form provided by the Clerk or typewritten in conformity therewith. The statement of proposed distribution shall be the concluding paragraph of the petition for adjudication. The petition for adjudication shall be signed by each accountant and be sworn to, affirmed by, or verified by at least one of them.

(3) Persons filing accounts for audit shall submit, with the Petition for Adjudication, all the required supporting documents securely fastened at the top, not stapled or sealed, in the order shown in checklists which can be obtained from the Clerk of the Orphans' Court Division. Where the account indicates that any balances are to be awarded to an existing trust, or that there has been a transfer of funds between the probate and the trust estates, a copy of the trust instrument, and amendments thereto, certified by counsel to be correct, shall be attached.

Rule L6.9B. Settlement of Small Estates

(1) Petitions for distribution of small estates under Section 3102 of the Code, shall set forth:

(a) The name and address of the petitioner and the relationship of the petitioner to the decedent;

(b) The name, date of birth and domicile of the decedent, whether the decedent died intestate, the dates of the probate of the will and of the grant of letters, if any, and whether the personal representative has been required to give bond and in what amount;

(c) The names and relationships of all beneficiaries entitled to any part of the estate under the will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages or similar items under Section 3101 of said Code or otherwise, and whether any of them are minors, incapacitated persons, or deceased, with the names of their fiduciaries, if any;

(d) The person or persons, if any, entitled to the family exemption and, if a claim therefor is made in this petition, any additional facts necessary to establish the prima facie right thereto, as required by Rule 12.1;

(e) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit;

(f) A list showing the status of the inheritance tax;

- (g) An averment showing the status of the inheritance tax;
 - (h) That ten days written notice of intention to present the petition has been given to any unpaid beneficiary, heir or claimant who has not joined in the petition, or to the attorney general, if the decedent's heirs are unknown. Notice shall be given in accordance with Rule 5.1; and
 - (i) A prayer for distribution of the personal property to those entitled and, in appropriate cases, for the discharge of the personal representative.
- (2) There shall be attached to the petition the following exhibits:
- (a) The original of the decedent's will, if it has not been probated, or a copy of the will, if it has been probated;
 - (b) Joinders of unpaid beneficiaries, heirs and claimants insofar as they are obtainable;
 - (c) An itemized list of disbursements made prior to the filing of the petition, indicating the payee and whether the disbursements were in payment of administration expenses, preferred or ordinary debts, items of distribution or the family exemption;
 - (d) A copy of the inheritance tax return and, if applicable, proof of payment.
 - (e) A copy of any notice given.
- (3) No appraisal shall be required unless ordered by the Court.

A sample Small Estate Settlement Petition is available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills

Rule 6.10. Objections to Accounts and Statements of Proposed Distribution

Objections to an account or statement of proposed distribution shall be made or filed at such place and time, shall be in such form, and such notice thereof shall be given as local rules shall prescribe.

Rule L6.10A. Form of Objections

Objections to accounts, petitions for adjudication and statements of proposed distribution shall be in writing, numbered consecutively, and signed by the objector or the objector's attorney. Each objection shall:

- (1) Be specific as to description and amount;
- (2) Raise but one issue of law and fact, but if there are several objections to items included in or omitted from the account or schedule of distribution relating to the same issue, all such objections shall be included in the same objection; and

- (3) Set forth briefly the reason or reasons in support thereof.

Rule L6.10B. Objections. Filing and Service of Copy

(1) Time of Filing - Objections may be filed with the Clerk at, or prior to the session of court when the account objected to is listed for audit. No objection shall be filed thereafter without leave of Court.

(2) Service of Copy - After filing, a copy of the objections shall be served on accountant's attorney and other parties of record within five days of the date of filing.

Rule L6.10C. Disposing of Objections and Claims

In those cases in which a hearing is requested, the Court may fix a day for hearing or argument.

Rule 6.11. Confirmation of Accounts Awards

(a) No account shall be confirmed or statement of proposed distribution approved until an adjudication or a decree of distribution is filed, in conformity with local rules, by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying, or indicating by reference to the statement of proposed distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each of such persons.

(b) Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, any distribution made by a fiduciary shall be made at his own risk unless directed by an adjudication, decree of distribution or order of the court.

Rule L6.11A. Filing Receipt and Releases

When any distribution is made pursuant to Supreme Court Rule 6.11(b), a fiduciary may file with the Clerk those documents which evidence the agreement pursuant to which distribution is made and the receipt thereof.

Rule L6.11B. Schedules of Distribution

(1) Filing - The Court, when it appears advisable or when requested, will direct the attorney for accountant to prepare and file a schedule of distribution. Schedules shall be signed by all accountants and certified by the attorney for the accountant(s) to be correct and in conformity with the adjudication, and shall be filed with the Clerk.

(2) Additional Receipts and Disbursements - Receipts and disbursements since the date to which the account was stated shall be set forth in the schedule of distribution.

(3) Objections - Objections to unconfirmed schedules of distribution shall be filed with the Clerk, and must be filed not later than the twentieth day after the schedule was filed. Such objection may raise questions relating only to the schedule itself, and shall in no event raise

questions which actually were or else could have been raised previously by claims, or by objections to the account or exceptions to the adjudication.

(4) Confirmation - If no objections are filed within twenty days after filing the schedule, it will be approved. Schedules approved in writing by all parties in interest will be approved on the day filed. Thereupon the accountant shall have authority to make necessary assignments and transfers of any securities awarded in kind, and the schedule will be attached to and become part of the adjudication.

Rule L6.11C. Schedules of Distribution Notice of Filing

(1) When Notice Given - Notice of filing the schedule of distribution shall be given to all parties in interest who have not filed their written approval of the schedule at the time of filing of the schedule, and shall include a copy of the schedule of distribution. The notice shall state that objections to the schedule must be filed within twenty days after the schedule is filed.

(2) Time and Method of Notice - Such notice shall be given before the schedule is filed, by letter addressed to the last known address of the party in interest or said party's attorney.

(3) Return of Notice - It shall be a sufficient return to such notice for the attorney or accountant to certify on the schedule that due notice of the filing thereof was given as required by this rule, and to attach a copy of the notice given.

Rule L6.11D. Objections to Schedules of Distribution - Notice of Filing, Time, Method, and Return

(1) To Whom Given - Notice of filing of objections to the schedule of distribution shall be given to the accountant and to all parties in interest affected thereby or their attorneys.

(2) Time and Method of Notice - Written notice shall be given no later than the day of the filing of the objections to the schedule by letter addressed to the last known address of accountant and all other parties in interest affected thereby or their attorneys. A copy of the objections shall be included with the notice to the accountant or the accountant's attorney.

(3) Return of Notice - At the time of filing of the objections, the attorney for the objector shall file a written certification that due notice of the filing thereof was given as required by these rules.

Rule L6.11E. Distribution of Real Estate

(1) When No Partition or Allotment Required or When Distributees Agree to Schedule - Schedules of distribution shall include separate awards of real estate to the parties entitled thereto, whether individually, or, where the circumstances require, in undivided interests. The real estate so awarded shall be identified by reference to the adjudication in the same detail and with the same particularity as is commonly required to be included in deeds and shall recite how the title was acquired by decedent. A copy of the last recorded deed(s), certified by the Recorder of Deeds, shall also be included.

(2) Partition or Allotment of Real Estate Requested by Accountant or a Party in Interest - Whenever partition or allotment of real estate is requested by the

accountant or a party in interest, the request shall be made prior to or at the audit, and the Court shall make such order, including a direction to submit an information certificate, issued by an attorney or a responsible title insurance company, showing, the current state of the title, if required, provisions for owelty, if any, the preparation of a schedule of distribution, notice to the parties, and fixing the dates of further hearings, as may be necessary to protect all parties in interest.

(3) **Certificate of Award of Real Estate** – A Certificate of Award of Real Estate shall be prepared by the attorney for the accountant and submitted to the Clerk for execution upon confirmation of the schedule of distribution. A Sample Certificate is available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills.

Rule 6.12. Status Report by Personal Representatives

(a) **Report of Uncompleted Administration** - If administration of an estate has not been completed within two years of the decedent's death, the personal representative or counsel shall file at such time, and annually thereafter until the administration is completed, a report with the Register of Wills showing the date by which the personal representative or counsel reasonably believes administration will be completed.

(b) **Report of Completed Administration.** Upon completion of the administration of an estate, the personal representative or his, her or its counsel shall file with the Register of Wills a report showing:

- (1) completion of administration of the estate
- (2) whether a formal account was filed with the Orphans' Court;
- (3) whether a complete account was informally stated to all parties in interest;
- (4) whether final distribution has been completed; and
- (5) whether approvals of the account, receipts, joinders and releases have been filed with the Clerk of the Orphans' Court.

(c) **Form of Report** - The report required by this Rule shall be in substantially the prescribed form.

(d) **No Fee.** No fee shall be charged for filing the report required by this Rule.

(e) **Copy of Rule.** Upon the grant of letters, the Register shall give a copy of this Rule to each personal representative and his, her or its counsel.

(f) **Failure to File a Report.** After at least ten (10) days prior notice to a delinquent personal representative and counsel, the Clerk of the Orphans' Court shall

inform the Court of the failure to file the report required by this Rule with a request that the Court conduct a hearing to determine what sanctions, if any, should be imposed.

STATUS REPORT UNDER RULE 6.12

Name of Decedent: _____

Date of Death: _____

Will No. _____ Admin. No. _____

Pursuant to Rule 6.12 of the Supreme Court Orphans' Court Rules, I report the following with respect to completion of the administration of the above-captioned estate:

1. State whether administration of the estate is complete:

Yes _____ No _____

2. If the answer is No, state when the personal representative reasonably believes that the administration will be complete: _____

3. If the answer to No.1 is Yes, state the following:

a. Did the personal representative file a final account with the Court?

Yes _____ No _____

b. The separate Orphans' Court No. (if any) for the personal representative's account is: _____

c. Did the personal representative state an account informally to the parties in interest?

Yes _____ No _____

d. Copies of receipts, releases, joinders and approvals of formal or informal accounts may be filed with the Clerk of the Orphans' Court and may be attached to this report.

Date: _____

Signature

Name (Please type or print)

Address

() _____
Telephone No.

Capacity: _____ Personal Representative

Adopted April 30, 1992, effective July 1, 1992.

Exceptions

Rule 7.1. Exceptions

(a) **General Rule.** Except as provided in Subdivision (e), no later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in Subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if the grounds for appeal are otherwise properly preserved.

(b) **Waiver.** Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

(c) **Time for Filing Exceptions.** If a party files timely exceptions, any other party may file cross exceptions within ten days after the filing of exceptions.

(d) **Multiple Aggrieved Parties.** Where more than one party is aggrieved by a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342, a timely appeal filed by any party renders exceptions a nullity by any other party and the order shall be submitted directly to the appellate court.

(e) **Adoptions and Involuntary Terminations.** No exceptions shall be filed to an order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. Section 2501, *et seq.*

(f) **Time Limits for Decision on Exceptions.** The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first day.

(g) **Exceptions.** Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

Amended December 20, 2000, effective January 1, 2001.

Rule L7.1A. Exceptions to Decrees, Generally

(1) Exceptions shall be the sole means of challenging an Adjudication, Order, Decree, or other Ruling that terminates a claim or affects a person's status in the action. If no exceptions are filed within twenty days of the Adjudication, etc., it shall become final.

(2) A party taking exceptions shall:

- (a) file the original with the Clerk of the Orphans' Court;
- (b) serve copies upon all parties, or their counsel, and the trial judge and,
- (c) file an affidavit of service with the Clerk of the Orphans' Court.

Rule L7.1B. Form of Exceptions

Exceptions shall be in writing, numbered consecutively and signed by the exceptant or exceptant's attorney. Each exception shall:

- (1) be specific as to description and amount;
- (2) raise but one issue of law or fact; and,
- (3) set forth briefly the reason or reasons in support thereof.

Rule L7.1C. Disposition of Exceptions

All exceptions shall be decided by the trial judge who may request argument to be scheduled by the Orphans' Court Administrator. Argument shall be heard by the trial judge unless the trial judge orders that the matter be heard by a court en banc of which the trial judge shall be a member. If the trial judge for any reason cannot decide the matter, another judge shall be designated to act. No more than three judges shall constitute the court en banc.

Rule 7.2. Transcript of Testimony

All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

Rule 8.1. Notice of Hearings

An auditor or master shall give notice of hearings held by him in such manner and to such parties as local rules shall prescribe.

Rule L8.1A. Notice

Auditors and masters shall give at least ten days notice of hearings held by them to all parties interested or to their attorneys of record in the manner provided in Supreme Court Rule 5.1, and local rules related thereto. Notice of succeeding hearings given by the auditor or master at a hearing of which proper notice has been given shall constitute sufficient notice of each of such succeeding hearings.

Rule 8.2. Filing of Report

An auditor or master shall file his report within ninety (90) days after his appointment, unless, upon application, the Court extends the time; and, in default thereof, his appointment may be vacated and compensation and reimbursement for services and expenses denied.

Rule 8.3. Form of Auditor's Report

An auditor's report shall include a statement of the questions involved, findings of fact, conclusions of law, and, if the account is approved by the auditor, it shall also expressly conform the account and shall specify, or indicate by reference to the statement of proposed distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each of such persons.

Rule 8.4. Form of Master's Report

A master's report shall state the number, times, dates and duration of the hearings before him, the number extent and causes of any delays or continuances, and the basis of the Court's jurisdiction, and shall include a statement and discussion of the questions involved, findings of fact and conclusions of law, and specific recommendations.

Rule 8.5. Transcript of Testimony

The transcript of testimony taken before an auditor or master shall be filed with his report.

Rule 8.6. Notice of Filing Report

An auditor or master shall give notice of the filing of his report or of the intention to file his report in such manner and to such parties as local rules shall prescribe.

Rule L8.6A. Notice and Objections

An auditor or master shall give notice of the filing of the report by sending a copy of the report to all parties of record. Any party in interest shall have the right to file objections to such

report within a period of twenty days of the filing of the report. If objections are filed, either party may request that they be listed for argument.

Rule 8.7. Confirmation of Report

(a) The report of an auditor shall be confirmed in such manner as local rules shall prescribe.

(b) The report of a master shall not be approved until a decree is entered adopting its recommendations.

Rule L8.7A. Decree

If no objections are filed within twenty days of the filing thereof, the Court may enter a decree confirming the auditor's report or adopting the master's report.

Rule 8.8. Security for Expenses and Fee

An auditor or master, the accountant or any party in interest may apply to the Court at any time for leave to require security for the payment of the auditor's or master's expenses and fees, and, when such leave is granted, the auditor or master may decline to proceed until security is entered.

Official Examiners

Rule 9.1. Appointment of Official Examiners

The Court by general rule or special order may appoint an official examiner or examiners who shall examine the assets held by any fiduciary in his fiduciary capacity whenever directed by the Court.

Register of Wills

Rule 10.1. Procedure and Forms

The practice, procedure and forms used before a Register of Wills shall be in substantial conformity with the practice, procedure and forms approved by the Supreme Court of this Commonwealth; or, in the absence thereof, the practice, procedure and forms approved by the local Orphans' Court Division.

Rule L10.1A. Renunciations

Any renunciations that are executed outside of the Office of the Register of Wills must be executed in the presence of a Notary Public.

Rule 10.2. Appeals from the Register of Wills

Appeals from judicial acts or proceedings of the Register of Wills and the practice and procedure with respect thereto shall be as prescribed by local rules.

Rule L10.2A. Filing of Notice of Appeal

(1) Filing with the Register of Wills. A person or entity desiring to take an appeal from the judicial acts or proceedings of the Register of Wills, shall file a Notice of Appeal with the Register of Wills, specifying the issues on which it is based, and stating whether or not there are disputed issues of fact that the person or entity requests be submitted to a jury, and setting forth the names of all interested parties and the necessary jurisdictional facts.

(2) Transmission to Orphans' Court. When a Notice of Appeal has been filed, the Register shall transmit the record to the Clerk of the Orphans' Court.

Rule L10.2B. Filing of Appeal and Issuance of Citation

The appellant shall file a petition for citation sur appeal with the Clerk of the Orphans' Court and request that the Court issue a citation to show cause why the appeal should not be sustained and the decision complained of set aside. The appeal shall have attached to it a preliminary decree, which authorizes the issuance of a citation and sets a return date for the citation, which shall be determined and set by the Orphans' Court Administrator. The Citation shall be made returnable no sooner than twenty days after the date of issuance, unless the Court, orders that it be returned sooner.

Rule L10.2C. Service of Appeal and Citation

The appellant shall serve the citation and a copy of the appeal upon all interested parties within five (5) days of receiving the citation. Service upon parties already of record shall be in accordance with Pa.R.C.P. 227.1(f). Service upon parties not already of record shall be in accordance with Pa.R.C.P. 400.

Jury Trials

Rule 11.1. Selection of Jurors

When any issue is to be tried by a jury in the Orphans' Court Division, a request shall be made to the Trial or Civil Division of the Court of Common Pleas of the county for a panel of jurors. A jury shall be selected from this panel and if additional jurors are required they shall be similarly obtained on request to the Trial or Civil Division of the Court of Common Pleas.

Rule 11.2. Conduct of a Trial

The selection of a jury, the conduct of a trial and motions after trial shall conform to the practice and procedure in jury trials in the local Court of Common Pleas.

Special Petitions

Rule 12.1. Family Exemption

(a) A petition for a family exemption shall set forth:

(1) facts establishing a prima facie right of the petitioner to the exemption;

(2) if the exemption is claimed from real estate, a request for the appointment of two appraisers to appraise the same;

(3) a description of the property claimed; and,

(4) whether allowance of the claim prior to the audit or confirmation of the account is requested.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.

(c) The Court may, at the request of the petitioner, award in distribution, specific real estate included in the account in satisfaction of or on account of, the family exemption without the necessity of compliance with the procedure outlined in subparagraphs (a) and (b) of this rule, provided, however, that all parties in interest agree in writing to the valuation at which the real estate is to be awarded.

Rule L12.1A. Local Procedure

(1) Claiming Family Exemption - The procedure for claiming the family exemption shall be in accordance with 20 Pa.C.S.A. § 3121 through 3126. All pleadings shall be prepared in accordance with Supreme Court Rule 3 et sec.

(2) Appraising Property – Those matters required to be prescribed by local rules in Supreme Court Rule 12.1(b) shall be by special order in each case.

Rule 12.2. Allowance to Surviving Spouse of Intestate

(a) When no account is filed and all or part of the spouse's statutory allowance is claimed from real estate, the claim shall be presented by petition, which shall set forth:

(1) facts establishing a prima facie right of the spouse to the allowance;

(2) a description of the real estate; and,

(3) a request for the appointment of two appraisers to appraise the real estate.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.

(c) The court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory allowance without compliance with the procedure outlined in subparagraphs (a) and (b) of this rule if all

parties in interest agree in writing that the surviving spouse is entitled to the allowance and to the valuation of which such real estate is to be awarded.

Rule L12.2A. Local Procedure

Those matters required to be prescribed by local rules in Supreme Court Rule 12.2 (b) shall be by special order in each case.

Rule 12.3. Revocation, Vacating and Extension of Time for Filing of Surviving Spouse's Election

(a) A petition to revoke or vacate an election of a surviving spouse to take under or against the will and other conveyances of the decedent shall set forth:

(1) the date of the decedent's death, whether his will has been probated and, if so, a reference to the place of recording;

(2) the name and capacity of the fiduciary of the decedent's estate, if any, and a reference to the record of his appointment;

(3) the names, addresses and relationship, if known, of those interested in the estate and the extent of the interest of each of them;

(4) the names of the parties in interest who have consented to the revocation or vacating of the election, and the names of those who have not consented and the reason, if any, for so refusing;

(5) a description and valuation of the decedent's real and personal property affected by the election;

(6) the date and manner of executing the election desired to be revoked or vacated; whether the same has been recorded, registered or filed, and if so, the date and place thereof;

(7) whether the surviving spouse has made or executed and delivered at any place an election contrary to that desired to be revoked or vacated and whether that election has been recorded, registered or filed, and if so, the date and place thereof,

(8) the facts relied upon to justify the revocation or vacating of the election; and

(9) a request for a citation upon the parties in interest who have not joined in the petition or who have not consented thereto to show cause why the election should not be revoked or vacated.

(b) A petition for the extension of the time in which the surviving spouse may file an election to take against the will and other conveyances shall be filed at such place and time and shall be in such form as local rules may prescribe.

Rule L12.3A. Extension of Time

An extension of time in which the surviving spouse may file an election to take against a will shall be by special order in each case.

Rule 12.4. Appointment of a Guardian Ad Litem or a Trustee Ad Litem

(a) On petition of the accountant or any party in interest, or upon its own motion, the Court may appoint (1) a guardian ad litem to represent a minor or an incompetent not represented by a guardian, or (2) a trustee ad litem to represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a fiduciary, unless the Court considers that the interests of such persons are adequately represented.

(b) The same person may be appointed as guardian ad litem and trustee ad litem when the interests represented are not conflicting. Application for such an appointment may be made in one petition:

(c) The petition shall set forth:

(1) the name, age and address of the minor or incompetent for whom a guardian ad litem is to be appointed and his relationship, if any, to any party in interest and to the decedent or settler; and

(2) the interest of the minor incompetent, absentee, presumed decedent, or the unborn or unascertained interests to be represented by a guardian ad litem or a trustee ad litem, the provision of any instrument creating such interests, the necessity for such interests being represented and the proceedings in which they are to be represented.

(d) A decree appointing a guardian ad litem or a trustee ad litem shall specify the period or proceedings during which he shall act as such.

Rule L12.4A. Filing of Report

A guardian ad litem or trustee ad litem shall file a report within thirty (30) days of appointment, unless the time is otherwise fixed by the Court.

Rule 12.5. Appointment of a Guardian for the Estate or Person of a Minor

(a) A petition for the appointment of a guardian for the estate or person of a minor shall be filed by the minor, if over fourteen (14) years of age and, if under such age, by his parent or parents, the person with whom he resides or by whom he is maintained or by any person as next friend of the minor.

(b) The petition shall set forth

(1) the name, address and age of the minor, and the names and addresses of his parents, if living;

(2) the name, address and relationship to the minor of the petitioner, if the petition is not filed by the minor;

(3) that the minor's parents consent to the petition, if it is not filed by them, or the reason why they do not consent;

(4) the necessity of the appointment of a guardian and that the minor has no guardian or that a guardian already appointed has died or has been discharged or removed by the Court, together with the date of such death, discharge or removal and a reference to the court record of such discharge or removal;

(5) the name, address, and age of the proposed guardian and his relationship to the minor, if any;

(6) the nature of any interest of the proposed guardian adverse to that of the minor including inter alia a reference to any estate in which the minor is interested and in which the proposed guardian is a fiduciary or surety or employee of a fiduciary or surety therein;

(7) if the petition is for the appointment of a guardian of the person, the religious persuasion of the parents of the minor and of the proposed guardian;

(8) if the petition is for the appointment of a guardian of the estate, an itemization of the assets of such estate, their location, approximate value and income, if any;

(9) if the minor is entitled to receive any money as a party to any action or proceeding in any court, a reference to the court record and the amount to which the minor is entitled; and

(10) that notice has been given to the United States Veterans' Administration or its successor, if the minor is the child of a veteran and insurance or other gratuity is payable to him by the United States Veterans' Administration, or its successor.

(c) The proposed guardian's written consent to the appointment shall be attached to the petition.

(d) If the appointment of the same person is requested as guardian of the estates or persons of several minors who are children of the same parents, a single petition shall be filed for such appointment.

(e) If the minor is over the age of fourteen (14) his appearance in court at the time of the presentation of the petition shall be governed by local rule.

Rule L12.5A. Appearance of Minor

The minor shall be present at the hearing unless specifically excused by the court.

Rule L12.5B. Restricted Accounts

In lieu of the appointment of a guardian, the Court may authorize the deposit of funds of a minor pursuant to the provisions of Section 5103 of the Code.

Rule L12.5C. Certificate of Appointments; Security

If bond is required of a guardian, the clerk shall not issue the certificate of the guardian's appointment until the bond has been filed. Where the guardian is appointed for several minor children of the same parents, one bond may be filed to cover the several estates.

Rule L12.5D. Allowances

When a petition is necessary for an allowance from a minor's estate, the petition shall set forth the:

- (1) Manner of the guardian's appointment and qualification, and the dates thereof;
- (2) Age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, the age of the minor's spouse and children, if any;
- (3) Value of the minor's estate, real and personal, and the minor's net annual income;
- (4) Circumstances of the minor, whether employed or attending school; if the minor's parent(s), or other person charged with the duty of supporting the minor, is living, the financial condition and income of such person and why that person is not discharging his or her duty to support the minor; and whether there is adequate provision for the support and education of the minor, the minor's spouse and children;
- (5) Date and amount of any previous allowance by the Court; and
- (6) Financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary.

Rule 12.6. Appointment of a Trustee

(a) A petition for the appointment of a trustee may be filed by any party in interest and shall set forth:

- (1) the reason for filing the petition;**
- (2) the provisions of the instrument creating the trust;**
- (3) the general character, location and value of the trust property;**
- (4) the names, addresses and relationships of all parties in interest and that those who have not joined in or consented to the petition have been given notice of the intention to file the petition, or the reason for failing to give such notice; and**
- (5) the name and address of the proposed trustee and his relationship, if any, to any party in interest and his interest, if any, in the trust.**

(b) The proposed trustee's written consent to the appointment shall be attached to the petition.

Rule L12.6A. Exhibits

The following additional exhibits shall be annexed to the petition:

- (1) Copy of the trust instrument.
- (2) Any consent or joinders of parties in interest.

Rule 12.7. Discharge of a Fiduciary and Surety

(a) Account Previously Filed - A petition for the discharge of a fiduciary and his surety, or of the surety alone, subsequent to an account having been filed and confirmed, shall set forth:

- (1) the nature of the fiduciary capacity;**
- (2) the date and a reference to the record of the fiduciary's appointment;**
- (3) the date of filing the fiduciary's account and that it has been confirmed absolutely; and,**
- (4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.**

(b) Account Annexed - In lieu of filing and advertising an account, a personal representative who is distributing an estate under the provisions of Section 3531 of the Probate, Estates and Fiduciaries Code (20 P.S. §320.731), or the guardian of the estate of a minor who has attained his majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex his account to the petition for discharge with the information required above, modified to indicate any previous distribution and to suggest the property distribution of any balance on hand.

Rule L12.7A. Exhibits

Written consent of the surety, if any, shall be attached to the petition, and orders to satisfy awards from all other parties shall be submitted with the petition.

Rule L12.7B. Discharge of Personal Representative Under Section 3531 of the Code

A petition with account annexed under Section 3531 of the Code shall conform to the extent practicable with the requirements of a petition for the settlement of a small estate under Section 3102 of the Code as set out in Rule L6.9B of the Chester County Orphans' Court Rules.

Rule 12.8. Partition

A petition for partition shall set forth:

- (a) the date of the decedent's death and whether he died testate or intestate, in whole or in part;**
- (b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;**
- (c) the names, addresses, and relationship of those interested in the land to be partitioned, the extent of the interest of each of such persons, and, if such interest is created by a recorded deed or will, a reference to such record; and,**
- (d) a request for a citation upon the parties in interest who have not joined as petitioners to show cause why an inquest in partition should not be granted.**

Rule 12.9. Public Sale of Real Property

(a) A petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the size and location of the property to be sold, and the liens and charges to which it is subject.

(b) Public notice of the sale shall be given as required by law and as may be further required by the Court by general rule or special order.

Rule L12.9A. Public Sale, Contents of Petition, Additional Requirements

(1) Personal Representative - A petition by a personal representative to sell real property at public sale, under Section 3353 of the Code shall also set forth in separate paragraphs:

(a) The name, residence and date of death of the decedent, whether the decedent died testate or intestate, and the date of the grant of letters;

(b) That the personal representative is not otherwise authorized to sell by the Code; or is not authorized or is denied the power to do so by the will, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(c) Whether an inventory and appraisal has been filed, the total value of the property shown therein, and the value at which the real property to be sold was included therein;

(d) If the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

(e) The names and relationships of all parties in interest, a brief description of their respective interests, whether any of them are deceased, minors, or incapacitated persons, and if so, the names and the record of the appointment of their fiduciaries;

(f) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current tax assessment; and

(g) Sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(2) Trustee- A petition by a trustee to sell real property at public sale, under Section 2133.16 of the Code shall also set forth in separate paragraphs:

(a) How title was acquired, stating the date and place of probate of the will or recording of the deed;

(b) A recital of the relevant provisions of the will or deed pertaining to the real property to be sold, and of the history of the trust;

(c) The names and relationships of all parties in interest, a brief description of their respective interests, and whether any of them are deceased, minors, or incapacitated persons, and if so, the names and the record of the appointment of their fiduciaries;

(d) The improvements on the property, by whom it is occupied, its rental value and current tax assessment;

(e) That the trustee is not otherwise authorized to sell by the Code, or is denied the power by the trust instrument, or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and

(f) Sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

(3) Guardian -A petition by a guardian to sell real property at public sale, under Section 5153.1 of the Code shall also set forth in separate paragraphs:

(a) The age of the ward;

(b) The names of the ward's next of kin and the notice given them of the presentation of the petition. When there are no known next of kin who are sui juris to whom notice may be given, public notice in accordance with Rule L5.1B, must be given and proofs thereof must be attached to the petition as an exhibit;

(c) How title was acquired, stating the date and place of probate of the will or recording of the deed;

(d) A recital of the provisions of the will or deed relating to the real property to be sold;

(e) The nature and extent of the interest of the ward, and of other persons in the real property;

(f) The improvements on the property, by whom it is occupied, its rental value and current tax assessment; and

(g) Sufficient facts to enable the Court to determine that the proposed sale will be for the best interest of the ward.

Rule L12.9B. Exhibits

The following exhibits shall be attached to a petition by a personal representative, trustee, or guardian to sell real property at public sale:

- (1) A copy of the will, deed or decree by which the fiduciary was appointed;
- (2) Any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent to join;
- (3) Consent by any mortgagee whose lien would otherwise not be discharged by the sale, or, if not attached, the reason therefor; and
- (4) An affidavit as to value by one real estate appraiser.

Rule L12.9C. Decree

Upon presentation of any of the foregoing petitions, the Court, if satisfied that public sale is appropriate, shall enter a Decree fixing the time within which public sale shall be held and further fixing the time thereafter within which the return of sale shall be made to the Court.

Rule L12.9D. Notice and Return

(1) After the allowance of a petition for public sale of real property, notice of the public sale shall be given as provided in Rule L5.1B.

(2) Returns of public sale of real property for the purpose of an approval or confirmation by the Court shall be in the form of an affidavit, which shall set forth:

- (a) The information required by Rule L5.4A and the advertisement made;
- (b) The name and address of the purchaser and that said purchaser was the highest bidder;
- (c) As an attachment, a complete copy of the written agreement of sale: and,
- (d) Whether any exceptions to the confirmation have been filed.

Rule L12.9E. Security

On the return day of the sale, the Court, in the decree approving or confirming the public sale, will fix the amount of bond or additional security which the personal representative, trustee or guardian shall be required to enter, or will excuse the fiduciary from entering additional security.

Rule L12.9F. Petition to Fix or Waive Additional Security, Personal Representative, Trustee

(1) Form of Petition - In a sale, whether public or private, of real estate by a personal representative or trustee without benefit of an order of court directing or authorizing such sale,

where the personal representative or trustee is required to give bond as such personal representative or trustee, he or she shall, before the proceeds of the sale are paid to the personal representative or trustee by the purchaser, present a petition to the Court setting forth:

- (a) The date of death of the decedent;
- (b) The date of the petitioner's appointment;
- (c) The amount of the bond or bonds filed by the petitioner and the date of such filing and the name or names of the petitioner's surety;
- (d) The total valuation of the personal estate as shown in the inventory and appraisal, if any, and the total proceeds of any real estate sold previously;
- (e) A short description of the real property sold, the name of the purchaser and the amount of the consideration to be paid;
- (f) A prayer for an order fixing the amount of additional security or for an order excusing the petitioner(s) from filing additional security, as the case may be; and;
- (g) In those cases in which waiver of additional security is sought, the consent of the parties in interest shall be attached and a statement as will justify the waiver of the additional security shall be included, and said statement shall include, but not be limited to, an averment that there are no creditors whose claims shall be jeopardized by the sale and that all taxes have been paid.

(2) Surety on Additional Bond-The surety on any additional bond except for cause shown shall be the same as on the original bond.

Rule 12.10. Private Sale of Real Property or Options Therefor

(a) A petition for the private sale or exchange of real property, or for the grant of an option for any such sale or exchange shall set forth

(1) the information required in a petition for the public sale of real property; and

(2) the name and address of the proposed purchaser and the terms of the proposed sale, exchange or option, the consideration therefor, and that this is more than can be obtained at public sale.

(b) The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned and, in the case of an exchange, the property to be received, that they are acquainted with the value of real estate in the locality of such property, that they are not personally interested in the proposed sale, exchange or option, and that in their opinion the proposed consideration is more than can be obtained at public sale.

The following exhibits shall be attached to a petition by a personal representative, trustee or guardian to sell real estate at private sale:

- (1) a copy of the will, deed or decree by which the fiduciary was appointed;
- (2) any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join, such notice containing the date of the presentation of the petition to the Court;
- (3) consent by any mortgagee whose lien would otherwise not be discharged by the sale or, if not attached, the reason therefor; and
- (4) a copy of the agreement of sale.

Rule L12.10B. Security

The Court, in the decree approving or confirming the private sale, will fix the amount of bond or additional security which the personal representative, trustee or guardian shall be required to enter, or will excuse the fiduciary from entering bond or additional security.

Rule 12.11. Mortgage or Lease of Real Property

A petition to mortgage or lease real property shall set forth:

- (a) the information required in a petition for the public sale of real property, as nearly as may be; and,**
- (b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.**

Rule L12.11A. Mortgage or Lease of Real Property, Additional Requirements

(1) Contents of Petition - A petition to mortgage or lease real property by a personal representative, trustee or guardian, shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed mortgage loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed mortgage or lease should be approved.

(2) Exhibits - The following exhibits shall be attached to the petition where applicable:

- (a) a copy of the will, deed or decree by which the fiduciary was appointed;
- (b) consents to the mortgage or lease signed by those parties in interest who do not join in the petition, and the names and a copy of the notice which has been given to those parties who do not consent;
- (c) a statement by the proposed mortgagee agreeing to grant the mortgage loan; and,

(d) an appraisal by a real estate broker of the real property on which the proposed mortgage is to be secured.

(3) Security - The amount of the security or additional security required to be entered, or the waiver thereof, will be determined by the Court in its decree approving the mortgage.

Rule 12.12. Inalienable Property

A petition under Chapter 83 of the Probate, Estates and Fiduciaries Code to sell real property at public or private sale or to mortgage real property shall set forth, in addition to the facts required to be set forth by that Act:

(a) the names of all parties in interest who have not joined as petitioners, and their addresses, if known; and,

(b) if the petition is for the public or private sale of real property subject to a life estate with remainder over and the real property is not held in trust, the petition shall request the appointment of a named trustee to make the sale and hold the proceeds in trust.

Rule 12.13. Designation of a Successor Custodian

A petition for the designation of a successor custodian under the Pennsylvania Uniform Gifts to Minors Act¹ shall set forth as far as practicable the information required in a petition for the appointment of a guardian of the estate of a minor.

¹ See now, Pennsylvania Uniform Transfers to Minors Act, 20 Pa.C.S.A. §5301 et sec.

Rule 12.14. Confirmation of Appointment

(a) Where a trustee is appointed by or pursuant to a trust instrument, confirmation by the court of such appointment may be obtained on petition which shall set forth:

(1) the reason for filing the petition; and,

(2) the pertinent provisions of the instrument creating the trust and providing for the appointment of the trustee.

(b) There shall be attached to the petition:

(1) a copy of the trust instrument duly certified by counsel to be a true and correct copy; and,

(2) the designated trustee's written consent to serve.

Rule 12.15. Cemetery Companies and Non Profit Corporations Incorporated for Charitable Purposes

When a cemetery company or non-profit corporation incorporated for charitable purposes is required to file an accounting, the filing by the company or the corporation of its financial statements for its three most recent fiscal years shall ordinarily be sufficient in lieu of account in the form required by Rule 6 of these Rules, unless the court allows the company or corporation to submit the financial information in some other form.

Official Note: Upon application or its own motion, the Court may require some of the following:

- (1) The statute or other authority under which the corporation was incorporated and the date of its incorporation;
- (2) The names and addresses of the trustees or directors of the company or corporation;
- (3) A concise statement of the general purpose of the company or corporation; or
- (4) A copy of the company's or corporation's charter or articles of incorporation and bylaws.

See also O.C. 5.5 pertaining to the notice to the Attorney General.

RULE 13. DISTRIBUTION-SPECIAL SITUATIONS

Rule 13.1. Representation by Counsel

A foreign distributee or claimant may be represented by counsel who possesses a valid duly authenticated power of attorney executed by the distributee or claimant.

Rule 13.2. Existence and Identity

If it appears that the decedent may have heirs in a foreign country but their location, existence or identity is unknown, the fiduciary shall notify the consulate of the country prior to audit of such facts as the fiduciary has which led him to the belief that the decedent may have had heirs in the country in question.

Rule 13.3. Report by Fiduciary

Whenever the existence, identity or whereabouts of a distributee is unknown or it appears that a distributee may not have the actual benefit, use, enjoyment or control of the money or other property if awarded to him or the court is requested to withhold distribution or to make an award other than to the distributee or his nominee, the fiduciary or his counsel shall submit to the court or auditor, as the case may be, a written report outlining the investigation made by him and the facts relevant thereto. The report shall be in such form and may be filed at such place and time as; shall be prescribed by general rule or special order of the local Orphans' Court.

RULE 14. GUARDIANSHIP OF INCAPACITATED PERSONS

A packet of suggested forms and procedures is available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills.

Rule 14.1. Local Rules

The practice and procedure with respect to incapacitated persons' shall be as prescribed by local rules which shall not be inconsistent with Rules 14.2-5.

Rule L14.1A Preliminary Decree

A Preliminary Decree for the purpose of issuing a citation and setting a hearing date shall be attached to each petition. A suggested form of preliminary decree is available as part of the forms packet which can be obtained in the Office of the Clerk of the Orphans' Court and on its website cited above.

Rule L14.1B. Separate Accounts

The account of a guardian for an incapacitated person and the account of a deceased incapacitated person's estate shall be separately stated. Where the guardian and the personal representative are the same, the accounts of the guardian and the personal representative may be filed in one proceeding.

Rule L14.1C. Guardian's Accounts

Guardian's accounts filed for audit shall conform with Rules 6.1 through 6.11 and the Chester County Orphans' Court Rules regarding accounts and distribution which accompany them.

Rule L14.1D. Guardian's Accounts – Additional Requirements

Guardian's accounts shall have attached thereto as an exhibit a copy of the guardian's inventory and a copy of the order or decree appointing the guardian. If the accounting is occasioned by the death of the incapacitated person, the account shall have attached thereto a copy of the will if the incapacitated person died testate, and a copy of the appointment of the personal representative of the deceased incapacitated person's estate.

Rule L14.1E. Notice of Filing of Account

Notice of the filing of the account shall be given as required by Rule 6.3 and the local rules adopted there under and, in all cases, notice shall be given to individuals entitled to notice under 20 Pa.C.S.A. §5511.

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

A petition to adjudicate incapacity shall meet all requirements set forth at 20 Pa.C.S. § 5511. A citation and notice in the form set forth in Rule 14.5 shall be attached to and served with a petition. The procedure for determination of incapacity and for

appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5512 and 5512.1.

Rule L14.2A. Petition, additional requirement

The Petition shall include an allegation as to whether the alleged incapacitated person is known to have appointed an attorney-in-fact, trustee or agent, and if so, his identity and address. The proposed guardian's written consent to the appointment shall be attached to the petition.

Rule L14.2B. Testamentary Writings

A person who possesses a testamentary writing of an incapacitated person shall file the original or a certified copy of each writing with the Clerk of Orphans' Court at the time of filing of the guardian's inventory. If a certified copy is filed, the person shall also present the original to the Clerk of the Orphans' Court for verification. The documents shall be impounded until further order of the Court.

Rule 14.3. Review Hearing

A petition for a review hearing shall set forth:

- (1) the date of the adjudication of incapacity;**
- (2) the name and address of the guardian;**
- (3) if the incapacitated person has been a patient in a mental hospital, the name of such institution, the date of admission, and the date of discharge;**
- (4) the present address of the incapacitated person and the name of the person with whom the incapacitated person is living;**
- (5) the names and addresses of the presumptive adult heirs of the incapacitated person; and**
- (6) an averment that (i) there has been significant change in the person's capacity;(ii) there has been a change in the need for guardianship services; or (iii) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person.**

Rule 14.4. Proceedings Relating to Real Estate

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

Rule 14.5. Form of Citation and Notice

The citation and notice to be attached to and served with a petition for adjudication of incapacity and appointment of guardian shall be substantially in the following form:

**COURT OF COMMON PLEAS
OF _____ COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION
TO _____**

IMPORTANT NOTICE

CITATION WITH NOTICE

A petition has been filed with this Court to have you declared an Incapacitated Person. If the Court finds you to be an Incapacitated Person, your rights will be affected, including your right to manage money and property and to make decisions. A copy of the petition which has been filed by _____ is attached. You are hereby ordered to appear at a hearing to be held in Courtroom No. _____, _____, Pennsylvania, on _____ at _____.m. to tell the Court why it should not find you to be an Incapacitated Person and appoint a Guardian to act on your behalf.

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

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

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

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

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

By: _____
Clerk, Orphans' Court

Note: Rule 14.5 prescribes the form of the uniform citation and notice to be served with a petition for adjudication of incapacity and appointment of guardian as required by Section 5511 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5511.

The rule is part of an ongoing process by which all existing subdivisions of Rule 14 are being revised to reflect current requirements.

Rule L14.5A. Service and Notice

Personal service shall be made on the alleged incapacitated person, and notice of the petition and hearing shall be given in accordance with 20 Pa.C.S.A. §5511(a). Notice shall also be given to any attorney-in-fact, trustee or agent.

Rule L14.5B. Proof of Service and Notice

An Affidavit of service of citation with notice and petition shall be filed in the Office of the Clerk of the Orphans' Court at least seven days before the date of the hearing. The affidavit of service shall be made in the suggested form available in the Office of the Clerk of the Orphans' Court or on its website cited above.

RULE 15. ADOPTIONS

A packet of suggested forms and procedures is available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills.

Rule 15.1: Local Rules

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and to the extent not inconsistent therewith shall conform either with the pertinent general rule or special order of the local Orphans' Court or, in the absence thereof, with this Rule 15.

Rule L15.1A. Procedure

(1) In all pleadings relating to the termination of parent-child relationships and adoptions, all petitions, reports, etc., shall be filed with the Office of the Clerk of the Orphans' Court. They shall substantially conform to the suggested forms available at the Office of the Clerk of the Orphans' Court and on its website. Separate pleadings shall be filed for each proposed adoptee.

(2) When the first pleading is filed in a case, the case shall be given a number, and thereafter all papers filed in that case shall bear that number. The case shall be referred to at all times by number and the adoptee's initials.

(3) When parental rights are sought to be terminated, a separate petition for ending parental rights shall be filed for each parent. (Involuntary Termination, Confirm Consent or Voluntary Relinquishment.)

(4) All petitions shall have a preliminary decree attached for the purpose of setting a hearing date and shall specify the names and addresses of the persons to whom notice is to be given. The notice pursuant to 23 Pa.C.S. §2513(b) shall be attached to each petition. Hearing

dates shall be scheduled by the Orphans' Court Administrator and shall be not less than ten days after the service of the petition.

(5) A motion for the appointment of counsel for the child whose parent's rights may be terminated and an order relating thereto shall be presented with each petition for involuntary termination of parental rights. Petitioner shall deposit the amount provided by 23 Pa.C.S.A §2312(b)(2) toward counsel fees with the Office of the Clerk of the Orphans' Court at the time of filing the petition. No deposit shall be required for terminations involving Chester County Department of Children, Youth and Families.

(6) In every proceeding where the rules or statutes require that the adoptee's birth certificate be exhibited to the court, the original birth certificate shall show the names of the mother and father (if that information is recorded; if the name of the father is not recorded, but there is a claim of paternity under 23 Pa.C.S. §5103(b), that information shall be provided).

(7) The Report of Vital Statistics Form (H105) shall be filed with each petition for adoption as a separate unattached document.

Rule 15.2. Voluntary Relinquishment to Agency¹

(a) Petition. - A petition under Section 301 of the Adoption Act to relinquish parental rights and duties with respect to a child who has been in the care of an Agency shall include the following allegations:

(1) the name, address, age, racial background and religious affiliation of each petitioner;

(2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father of a child born out of wedlock, if he has been identified, unless the court, for cause shown, determines such information is not essential;

(3) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;

(4) the name, age, date of birth, racial background, sex and religious affiliation of the child;

(5) the name and address of the Agency having care of the child;

(6) the date when the child was placed with the Agency;

(7) when the child is born out of wedlock, whether the mother and the father of the child intend to marry;

(8) the reasons for seeking relinquishment;

(9) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in petitioner's and the child's best interests.

(b) Exhibits - The petition shall have attached to it the following exhibits:

(1) the joinder of a parent who is not a petitioner or his or her waiver of all interest in the child, if either is obtainable;

2) a birth certificate or certification of registration of birth of the child;

(3) the written consent of a parent or guardian of a petitioner who has not, reached 18 years of age;

(4) the joinder of the Agency having care of the child and its consent to accept custody of the child until such time as the child is adopted.

(c) Notice and Hearing - If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights and duties in and to the child or joined in the other parent's petition hereunder, then notice of the hearing on the petition to relinquish rights and duties shall be given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

¹ For the rights of a father of a child born out of wedlock, see *Stanley v., Illinois*, 92 S.Ct. 1208, 405 U.S. 645, 31 L.Ed.2d 551, 1972.

Rule L15.2A. Appearance of Intermediary

The court will require the appearance of representatives of agencies or individuals who have acted as the intermediary unless excused by the court.

Rule 15.3. Voluntary Relinquishment to Adult Intending to Adopt Child

(a) Petition - A petition under Section 302 of the Adoption Act to relinquish parental rights with respect to a child who has been in the exclusive care of an adult or adults who have filed a Report of Intention to Adopt shall include the allegations required under subparagraphs (1), (2), (3), (4), (7), (8) and (9) of Rule 15.2(a) and

(1) the date when the Report of Intention to Adopt was filed;

(2) the date when the child was placed with the adult or adults;

(b) Exhibits - The petition shall have attached to it the first three exhibits specified in Rule 15.2(b) and

(1) the separate consent of the adult or adults to accept custody of the child.

(c) Notice and Hearing - If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights in the child or joined in the petition hereunder, then notice of the hearing on a parent's petition to relinquish rights shall be

given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

Rule L15.3A. Appearance of Intermediary

The court will require the appearance of representatives of agencies or individuals who have acted as the intermediary unless excused by the court.

Rule 15.4. Involuntary Termination of Parental Rights ¹

(a) Petition - A petition for involuntary termination of parental rights under Sections 311 and 312 of the Adoption Act shall include the following allegations:

- (1) the name and address of the petitioner and his or her standing;**
- (2) the name, age, date of birth, racial background, sex and religious affiliation of the child;**
- (3) the name, address, age, racial background and religious affiliation of the parent or parents, including the father of a child born out of wedlock, if he has been identified;**
- (4) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;**
- (5) the date when the child was placed in the care of the petitioner;**
- (6) facts constituting grounds for the involuntary termination under Section 311 of the Adoption Act, and a reference to the applicable subsection or subsections;**
- (7) whether either parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. § 501 et seq.);**
- (8) that the petitioner will assume custody of the child until such time as the child is adopted.**

(b) Exhibits - The petition shall have attached to it the following exhibits:

- (1) a birth certificate or certification of registration of birth of the child;**
- (2) the joinder of a parent of a petitioner who is under the age of 18, unless excused by the court.**

(c) Guardian ad Litem.

(1) When the termination of the parental rights of a parent who has not attained the age of 18 years is sought, unless the court finds the parent is already adequately represented, the court shall appoint a guardian ad litem to represent the parent. The appointment of a guardian ad litem may be provided for in the preliminary order attached to the petition for involuntary termination of parental rights.

(2) The decree appointing a guardian ad litem shall give the name, date of birth and address (if known) of the individual whom the guardian ad litem is to represent and the proceedings and period of time for which the guardian ad litem shall act.

(d) Notice and Hearing - Notice of the hearing on the petition shall be given, in accordance with Rule 15.6 hereof, to the parent or parents whose rights are sought to be terminated, including the parent of a child born out of wedlock, to any intermediary named in a Report of Intention to Adopt, if one has been filed, and to the guardian of the person or guardian ad litem of any parent or parents who is or are under the age of 18 years. Each petitioner, each person whose joinder or consent is attached to the petition and any intermediary named in a Report of Intention to Adopt shall be examined under oath at the hearing unless they are excused by the court.

¹ **For the rights of a father of a child born out of wedlock, see *Stanley v. Illinois*, 92 S.Ct. 1208, 405 U.S. 645, 31 L.Ed.2d 551, 1972.**

Rule L15.4A. Involuntary Termination of Parental Rights

(1) Citation – When a petition for involuntary termination is filed, the Clerk of Orphans' Court shall issue to the parent or parents whose rights may be terminated a citation to show cause why the prayer of the petition should not be granted. The citation shall be made returnable no sooner than twenty days after the date of issuance, unless the court orders that it be returned sooner.

(2) Notification by the Clerk of the Orphans' Court – The Clerk of the Orphans' Court shall promptly mail a certified copy of all decrees terminating parental rights to the person whose rights have been terminated to their last known address by first class mail or to their attorney of record, and enter the mailing of such notice on the docket. For this purpose, the petitioner or the attorney for petitioner shall provide the clerk with the last known address of the person whose rights have been terminated.

Rule 15.5. Adoption ¹

(a) Petition - The petition shall contain all declarations and information required by Section 401 of the Adoption Act and any additional information required by local rules.

(b) Notice or Consent-Parents of Child. Notice as provided by Rule 15.6 shall be given to each parent unless

(1) he or she has consented in writing to the adoption and waived notice of hearing, or

(2) he or she has voluntarily relinquished his or her parental rights in a proceeding under Rule 15.2 or Rule 15:3, or

(3) his or her parental rights have been involuntarily terminated in a proceeding under Rule 15.4.

(c) Investigation - A petition for adoption shall be subject to investigation as prescribed by local rules. The investigation report shall cover the matters alleged in the petition, any other matters that may affect the welfare of the child, and the information required by Sections 335 and 424 of the Adoption Act.

(d) Disclosure of Fees and Costs - At the hearing there shall be offered in evidence a report, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

(e) Adult Change of Name - When the person to be adopted is over the age of 18 years and desires to assume the surname of the adopting parent or parents, evidence showing compliance with the law relating to change of name must be introduced before a decree will be made.²

¹ For the rights of a father of a child born out of wedlock, see *Stanley v. Illinois*, 92 S.Ct. 1208, 405 U.S. 645, 31 L.Ed.2d 551, 1972.

² Act of April 18, 1923, P.L. 75, as amended, 54 P.S. 1 et seq.

Rule L15.5A. Adoption

(1) Reports and Investigation

(a) In all cases in which the Chester County Department of Children, Youth and Families is the intermediary, the court may rely on the intermediary's report and will not require an investigation by a court appointed investigator. In all other cases, an investigation shall be conducted by a court appointed investigator who, in the investigator's discretion, may rely upon the report of a voluntary child care agency acting as intermediary.

(b) If the Report of the intermediary or the investigator is not filed within 6 months of the Report of Intention to Adopt (or appointment of investigator, in the case of the investigator), the Court, on motion of any party, may issue a rule upon the intermediary or investigator, as the case may be, to appear and show cause why the report in question has not been filed.

(c) If there is no intermediary named in the Report of Intention to Adopt, the attorney shall attach an affidavit to the report which shall explain in detail how the

persons filing the report received possession of the adoptee from the birth parent(s), who arranged for the exchange of possession of the adoptee, how the persons filing the report received knowledge of the existence of the availability of the adoptee for potential adoption, and any other information the attorney may have regarding the relationship of the persons filing the report to the birth parent(s) and how the adoption was arranged.

(2) Disclosure of Fees and Costs of Intermediary

(a) All intermediaries other than Chester County Department of Children, Youth and Families shall submit a full itemized disclosure of fees and charges with the Report of Intention to Adopt. No investigator will be appointed and no hearings will be scheduled until the fees have been found by the Court to be in compliance with 23 Pa.C.S.A. §2533(d).

(b) Counsel shall certify on the report offered into evidence that the adopting parent(s) have been given a copy of the Report and fees pursuant to 23 Pa.C.S.A. §2533(d).

(3) Required Submissions

In the course of causing an investigation to be made pursuant to 23 Pa.C.S.A. §2535(a), an agency or person designated by the Court to conduct such investigation, or the agency which placed the child, shall require prospective adoptive parents to submit the following information:

(a) Pursuant to 18 Pa.C.S.A. §9101, et seq. (relating to criminal history record information), a report of a criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. Such criminal record history information shall be limited to that which is disseminated pursuant to 18 Pa.C.S.A. §9121(b)(2) (relating to general regulations).

(b) A certification from the Department of Public Welfare as to whether the applicant is named in the central register as the perpetrator of a founded or indicated report of child abuse.

Prospective adoptive parents who are not residents of Pennsylvania shall submit an equivalent report and certificate from the State Police Department of the State of which they are residents

The certificate required by subsection (b) above shall be valid within 24 months prior to the placement of the child by the agency, or in the case of a private placement, the certificate shall be valid within 24 months of the hearing before the court.

Rule L15.5B. Adoption Investigation Fee

A person required to file a Report of Intention to adopt in accordance with 23 Pa.C.S.A. §§2531-2532 shall, when filing the report, pay an adoption investigation fee to the Office of the Clerk of the Orphans' Court, in such amount as shall be established by the court from time to time.

Rule L15.5C. Disclosure of Fees and Costs

Prior to scheduling a hearing on the petition for adoption, counsel for petitioner(s) shall file a signed certification of fees, costs and expenses as required by Rule 15.5(d). This certification shall be reviewed by the court, and if the court considers the amount to be unreasonable, the court may request that counsel provide an itemized billing statement.

Rule 15.6. Notice; Method and Time

Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address. If such service is not obtainable and the registered or certified mail is returned undelivered, then:

(1) no further notice shall be required in proceedings under Rules 15.2 or 15.3, and

(2) in proceedings under Rules 15.4 and 15.5, further notice by publication or otherwise shall be given if required by general rule or special order of the local Orphans' Court.

If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

Rule L15.6A. Notice; Method and Time

(1) All notices required and not obtainable in accordance with Rule 15.6 and the local rules promulgated thereunder shall be served in accordance with Pa.R.C.P. 430.

(2) If notice by publication is ordered by the court pursuant to Pa. R.C.P. 430, the publication shall also appear in a newspaper of general circulation in the area of the last known address of the birth parent or where the petitioner believes the birth parent may currently be residing unless otherwise ordered by the court.

(3) Petitioner(s) or petitioner(s)' counsel is responsible for seeing that notice is provided in accordance with the law for all persons entitled to notice. An affidavit of service shall be filed in all matters where notice is required, specifying the manner in which, and the person or agency to whom notice is given.

Rule 15.7. Impounding; Docket Entries; Reports; Privacy

(a) All proceedings shall be impounded, docket entries made, report made to the Department of Public Welfare, and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act, 23 Pa.C.S. § 2101, et seq.

(b) The name or names of the natural parents and the name or names of the child before adoption shall not be entered on any docket which is subject to public inspection.

(c) No decision under the Adoption Act of any hearing judge or appellate court publicly reported, or in any other way made available to the public by the court shall disclose the identity of the individual parties.

Rule 15.7A. Requests for Information

All requests for information under 23 Pa.C.S. §2905 shall be made by letter directed to the court or by presenting a completed questionnaire which can be obtained from the Office of the Clerk of the Orphans' Court or available on its website. If a court file is located regarding the adoption in question, the court will send a form of petition to the requestor for completion, which shall be filed in the Office of the Clerk of the Orphans' Court.

Rule 15.8. Foreign Adoption Registration

(a) Adoptive parent(s) may petition the court of common pleas in the county of residence to register a foreign adoption decree so that it will be given full and final effect in this Commonwealth. The petition shall be in the form approved by the Supreme Court.

(b) If the court of common pleas determines that the foreign adoption decree cannot be registered, the adoptive parent(s) may proceed under the Adoption Act and local rules of court to obtain a full and final decree of adoption.

Note: A set of forms for foreign adoption registration and detailed instructions are available at the Office of the Clerk of the Orphans' Court and on its website at www.chesco.org/wills

RULE 16. PROCEEDINGS PURSUANT TO SECTION 3206 OF THE ABORTION CONTROL ACT

The right of a minor to petition the court for consent under Section 3206(c), 18 Pa.C.S. § 3206(c), shall be carried forth pursuant to the following procedures:

Rule 16.1 Definitions. Scope

(a) As used in Rule 16,

"act" means the Act of June 11, 1982, P.L. 476, No. 138, as amended, 18 Pa.C.S. Section 3201 et seq., known as the Abortion Control Act.

"applicant" means a pregnant woman: (i) who is less than eighteen years of age and not emancipated or (ii) a person acting on behalf of a pregnant woman who has been adjudged an incapacitated person pursuant to Chapter 55 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. Section 5501, et seq.;

"application" includes a motion or petition;

"court" means the Orphans' Court Division of the Court of Common Pleas, except in proceedings brought: (a) in Philadelphia in which the applicant is a minor in which case the term "court" means the Family Court Division; (b) in Allegheny County where said proceedings shall be heard in the Juvenile Court Section of the Family Court Division;

"proceeding" means a proceeding pursuant to Section 3206(c) of the Act, 18 Pa.C.S. Section 3206(c).

(b) The procedure set forth in Rule 16 shall govern proceedings pursuant to Section 3206(c) of the Act, 18 Pa.C.S. Section 3206(c).

Rule 16.2 Confidentiality

(a) The proceeding shall be confidential.

(b) The record, including the application, pleadings, submissions, transcripts, exhibits, orders, evidence, findings and conclusions and any other written material to be maintained, shall be sealed.

(c) The identity of the applicant shall not be disclosed in any decision of the proceeding.

Rule 16.3 Precedence of Proceeding

The proceeding shall be given such precedence over other pending matters as will ensure that the court renders a decision within three business days of the date of the filing of the application.

Rule 16.4 Commencement. Venue. No Filing Fees

(a) The proceeding shall be commenced by filing an application in the appropriate division of the court of common pleas of the county in which the applicant resides or in which the abortion is sought.

(b) No filing fees or court costs shall be required of the applicant.

Rule 16.5 Application. Contents. Form of Verification. Assistance in Preparation

(a) The application shall set forth the following:

(1) the initials of the applicant;

(2) the age of the applicant;

(3) the names and addresses of each parent, guardian or, if the petitioner is a minor whose parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the applicant;

(4) a statement that the applicant has been fully informed of the risks and consequences of the abortion;

(5) a statement whether the applicant is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(6) a prayer for relief asking the court to enter an order authorizing a physician to perform an abortion upon applicant;

(7) an unsworn verification stating that the information therein is true and correct and that the applicant is aware that any false statements made in the application are punishable by law. The verification may, be substantially in the form prescribed by subdivision (b); and

(8) the signature of the applicant, which may consist of the applicant's initials.

(b) The verification required by subdivision (a)(7) may be substantially in the following form:

I verify that the statements made in this application are true and correct to the best of my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of Section 4904 of the Crimes Code, 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

(c) Where necessary to serve the interest of justice, the court shall refer the applicant to the appropriate personnel for assistance in preparing the application. Adopted

Rule 16.6 Dockets. Document Maintenance

(a) Each court shall maintain a sealed docket which is not open to public inspection.

(b) The proceeding shall be docketed by case number only.

(c) The name or initials of the applicant shall not be entered on any docket which is subject to public inspection.

(d) Documents pertaining to the proceeding shall be maintained in a closed file which shall be marked "confidential" and identified by the case number only.

Rule 16.7, 16.8. Rescinded March 31, 1994, imd. effective

Rule 16.10 Form; Generally

The form of application by a minor and form of separate unsworn verification shall be prepared and filed in substantial conformity with:

(i) the forms set forth in Rules 16.11 and 16.12; or (ii) the forms approved by the local court whichever the minor shall elect.

Rule 16.11 Form of Application by a Minor

When the applicant is a minor, the application prescribed by Rules 16.4 and 16.5 may be in the following form:

IN THE COURT OF COMMON PLEAS OF

_____ COUNTY

(JUVENILE COURT SECTION OF THE FAMILY DIVISION),

(ORPHANS') OR (FAMILY) COURT DIVISION

IN RE: Matter of _____ : Application No. ____
(Initials)

A Minor : of 20____

MINOR'S APPLICATION FOR

JUDICIAL AUTHORIZATION OF AN ABORTION

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Applicant, a minor, whose initials are _____, respectfully states:

1. Applicant is a pregnant woman, who (choose one):

___ is a resident of this county; or

___ seeks an abortion within this county.

2. Applicant's date of birth is , 19___

3. Applicant is approximately _____ weeks pregnant.

4. The name and address of each parent or guardian or person standing in loco parentis are contained in applicant's separate unsworn verification.

___Yes ___No 5. Applicant desires to terminate her pregnancy and has consulted with the physician who is to perform the abortion, or with a referring physician, for that purpose on _____ (date) at ___ o'clock (a.)(p.)m. Applicant has been fully informed of the risks and consequences of the abortion.

___Yes ___No 6. Applicant consents to the abortion procedure.

___Yes ___No 7. Applicant is of sound mind and has sufficient intellectual capacity to consent to an abortion.

___Yes ___No 8. Applicant is mature and capable of giving informed consent to the proposed abortion.

OR

_____Yes _____No The performance of an abortion upon the applicant would be in the applicant's best interests.

9. Applicant is executing an unsworn verification with respect to statements of fact in this application. The unsworn verification is set forth in a document separate from this application but incorporated herein by reference. Applicant is aware that any false statements made in this application are punishable by law.

Wherefore, applicant prays this Honorable Court to enter an Order authorizing a physician to perform an abortion upon applicant.

Respectfully submitted,

Applicant's Signature (Initials may be used as signature)

Rule 16.12 Form of Separate Unsworn Verification

If the unsworn verification is to be a document separate from the application, the verification may be in the following form:

IN THE COURT OF COMMON PLEAS OF

_____ COUNTY

(JUVENILE COURT SECTION OF THE FAMILY
DIVISION),

(ORPHANS') OR (FAMILY) COURT DIVISION

IN RE: Matter of _____ : Application No. _____
(Initials)

A Minor : of 19__

CONFIDENTIAL VERIFICATION

1. I, (initials only), am the applicant in a separate application for an abortion under Section 3206 of the Abortion Control Act.

2. The name and address of each of my parents, guardian or person standing in loco parentis is as follows (Please print):

Father's Name

Mother's Name

Guardian's Name

_____ Street	_____ Street	_____ Street
_____ City, State	_____ City, State	_____ City, State

3. I verify that the statements made in the separate application and in this unsworn verification are true and correct to the best of my personal knowledge or information and belief.

I understand that false statements herein are made subject to penalties of Section 4904 of the Crimes Code, 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Applicant's Signature
(Initials may be used as signature)

Applicant's Date of Birth Date

RULE 17. SHORT TITLE

These rules shall be known as Supreme Court Orphans' Court Rules, and shall be cited as Pa.O.C. Rules. Renumbered Rule 15, Nov. 24, 1975, effective Jan. 1, 1976. Renumbered from Rule 16, Nov. 26, 1984, imd. effective.

Rule L17.1A. The Rules set forth herein which do not appear in bold face type shall be known and may be cited as Ches. Co. O.C. Rules.

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