

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

**PRESIDENT JUDGE GENERAL COURT REGULATION NO. 99-01**

**In Re: Amendment of Existing Philadelphia County Orphans' Court Rules**

**O R D E R**

AND NOW, this 25 day of May, 1999, the Board of Judges of Philadelphia County having voted at the Board of Judges' Meeting held May 20, 1999 to rescind in their entirety existing Philadelphia Orphans' Court Rules and to adopt the attached Philadelphia Orphans' Court rules, IT IS HEREBY ORDERED AND DECREED that all existing Philadelphia Orphans' Court rules are rescinded and the attached Philadelphia Orphans' Court Rules are adopted.

This General Court Regulation is promulgated in accordance with Pa. O.C. Rule 1.2 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The original Joint General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Clerk of Orphans' Court, the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Procedural Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA  
PRESIDENT JUDGE  
COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

# Rules of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County

## Local Rules

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *1.1</b>	<b>Petitions, Motions and Other Applications.</b>	<b>Rule 1.2.A.</b>
<b>Rule *1.2</b>	<b>Argument List.</b>	<b>Rule 1.2.B.</b>
<b>Rule *1.3</b>	<b>Attorneys. [Rescinded July 13, 1994, effective October 3, 1994.]</b>	N/A
<b>Rule *1.4</b>	<b>Certification of Documents. Copies.</b>	<b>Rule 1.2.C.</b>
<b>Rule *1.5</b>	<b>Costs</b>	<b>Rule 1.2.D.</b>
<b>Rule *1.6</b>	<b>Decrees. Satisfaction and Enforcement.</b>	<b>Rule 1.2.E.</b>
<b>Rule *1.7</b>	<b>Certificates of Appointment. Fiduciaries.</b>	<b>Rule 1.2.F.</b>
<b>Rule *1.8</b>	<b>Identification of Signatures.</b>	<b>Rule 1.2.G.</b>
<b>Rule *1.9</b>	<b>Witness. Attachment.</b>	<b>Rule 1.2.H.</b>
<b>Rule *1.10</b>	<b>Individual Sureties.</b>	<b>Rule 1.2.I.</b>
<b>Rule *1.11</b>	<b>Corporate Sureties. Approval.</b>	<b>Rule 1.2.J.</b>
<b>Rule *1.12</b>	<b>Corporate Fiduciaries. Approval. Security.</b>	<b>Rule 1.2.K.</b>
<b>Rule *1.13</b>	<b>Individual Fiduciaries. Assets and Investments.</b>	<b>Rule 1.2.L.</b>
<b>Rule *1.14</b>	<b>Trusts Inter Vivos.</b>	<b>Rule 1.2.M.</b>
<b>Rule *1.15</b>	<b>Concurrent Jurisdiction.</b>	<b>Rule 1.2.N.</b>
<b>Rule *1.16</b>	<b>Depository of the Court.</b>	<b>Rule 1.2.O.</b>

## Construction and Application of Rules

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *23.1</b>	<b>Definitions.</b>	<b>Rule 2.3.A.</b>

### Pleading and Practice

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *32.1</b>	<b>Pleadings.</b>	<b>Rule 3.2.A.</b>
<b>Rule *32.2</b>	<b>Disposition of Pleadings.</b>	<b>Rule 3.2.B.</b>
<b>Rule *34.1</b>	<b>Form. Additional Requirements.</b>	<b>Rule 3.4.A.</b>
<b>Rule *35.1</b>	<b>Service of Copies of Pleadings. Exceptions. Objections.</b>	<b>Rule 3.5.A.</b>
<b>Rule *35.2</b>	<b>Citation Procedure.</b>	<b>Rule 3.5.B.</b>
<b>Rule *36.1</b>	<b>Philadelphia Orphans' Court Division Practice.</b>	<b>Rule 3.6.A.</b>
<b>Rule *36.2</b>	<b>Pre-Trial Conference.</b>	<b>Rule 3.6.B.</b>
<b>Rule *37</b>	<b>Perpetuation of Testimony and Court Records.</b>	<b>Rule 3.6.C.</b>

### Notice

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *51.1</b>	<b>Method. Legal Periodical.</b>	<b>Rule 5.1.A.</b>
<b>Rule *51.2</b>	<b>Method. Public Sale of Real Property.</b>	<b>Rule 5.1.B.</b>
<b>Rule *52.1</b>	<b>Method. When No Fiduciary.</b>	<b>Rule 5.2.A.</b>
<b>Rule *52.2</b>	<b>Method. Presumed Decedents and Unascertained Persons.</b>	<b>Rule 5.2.B.</b>
<b>Rule *54.1</b>	<b>Return of Notice. Additional Requirements.</b>	<b>Rule 5.4.A.</b>

### Accounts and Distribution

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *61.1</b>	<b>Form of Accounts.</b>	<b>Rule 6.1.A.</b>
<b>Rule *63.1</b>	<b>Time and Contents of Notice.</b>	<b>Rule 6.3.A.</b>
<b>Rule *63.2</b>	<b>Supplemental Notice.</b>	<b>Rule 6.3.B.</b>
<b>Rule *64.1</b>	<b>Filing for a Particular Audit.</b>	<b>Rule 6.4.A.</b>
<b>Rule *64.2</b>	<b>When Audit Lists Called. Postponed or Adjourned.</b>	<b>Rule 6.4.B.</b>
<b>Rule *66.1</b>	<b>Advertisements of Accounts. Posting.</b>	<b>Rule 6.6.A.</b>
<b>Rule *66.</b>	<b>Division of Account.</b>	<b>Rule 6.6.B.</b>

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *69.1</b>	<b>Filing of the Petition for Adjudication and Statement of Proposed Distribution.</b>	<b>Rule 6.9.A.</b>
<b>Rule *69.1.1</b>	<b>Forms. Execution. Verification.</b>	<b>Rule 6.9.B.</b>
<b>Rule *69.1.2.</b>	<b>Additional Receipts and Disbursements.</b>	<b>Rule 6.9.C.</b>
<b>Rule *69.1.3.</b>	<b>Papers to be Filed with Accounts.</b>	<b>Rule 6.9.D.</b>
<b>Rule *69.2</b>	<b>Appearances.</b>	<b>Rule 6.9.E.</b>
<b>Rule *69.3</b>	<b>Partition, Allotment or Distribution of Proceeds of Real Property.</b>	<b>Rule 6.9.F.</b>

**Distribution -- Special Situations**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *69.5</b>	<b>Contents of Report.</b>	<b>Rule 13.3.A.</b>
<b>Rule *70.1</b>	<b>Under Direction of Auditing Judge.</b>	<b>Rule 6.10.A.</b>
<b>Rule *72</b>	<b>Schedules of Distribution.</b>	<b>Rule 6.11.A.</b>

**Settlement of Small Estates**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *73</b>	<b>Settlement of Small Estates under Section 3102 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3102).</b>	<b>Rule 6.11.B.</b>

**Title to Real Property: Determination**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *74</b>	<b>Procedure Under Section 3546 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3546).</b>	<b>Rule 12.1.E.</b>

**Exceptions**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *76</b>	<b>Objections.</b>	<b>Rule 6.10.B</b>
<b>Rule *77.1</b>	<b>Exceptions. Rules Governing.</b>	<b>Rule 7.1.A.</b>
<b>Rule *77.2</b>	<b>Exceptions. Effect Upon Distribution.</b>	<b>Rule 7.1.B.</b>

#### Auditors and Masters

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *80</b>	<b>Appointment.</b>	<b>Rule 8.1.A.</b>
<b>Rule *81.1</b>	<b>Manner and to Whom Given.</b>	<b>Rule 8.1.B.</b>
<b>Rule *82.1</b>	<b>Where Filed.</b>	<b>Rule 8.2.A.</b>
<b>Rule *87.1</b>	<b>Report of Auditor or Master.</b>	<b>Rule 8.7.A.</b>
<b>Rule *88.1</b>	<b>Filing with Clerk.</b>	<b>Rule 8.8.A.</b>

#### Official Examiners

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *92</b>	<b>Charitable Trusts. Visitorial Powers.</b>	<b>Rule 9.1.A.</b>
<b>Rule *93</b>	<b>Termination of Trust.</b>	<b>Rule 9.1.B.</b>
<b>Rule *94</b>	<b>Compensation.</b>	<b>Rule 9.1.C.</b>

#### Register of Wills

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *102</b>	<b>Certification of Record.</b>	<b>Rule 10.2.A</b>
<b>Rule *103</b>	<b>Certifications. Assignments to an Audit List. Notice.</b>	<b>Rule 10.2.B.</b>
<b>Rule *104</b>	<b>Appeal from Register.</b>	<b>Rule 10.2.C.</b>
<b>Rule *105</b>	<b>Abandonment of Appeal. [Rescinded July 13, 1994, effective October 3, 1994.]</b>	<b>N/A</b>
<b>Rule *106</b>	<b>Grant of Jury Trial.</b>	<b>Rule 10.2.D.</b>
<b>Rule *107</b>	<b>Inheritance Tax Appeals.</b>	<b>Rule 10.2.E.</b>

**Jury Trials**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *110</b>	<b>Trial Judge.</b>	<b>Rule 11.2.A.</b>
<b>Rule *112.1</b>	<b>Motions After Trial.</b>	<b>Rule 11.2.B.</b>

**Special Petitions**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *121.1</b>	<b>Family Exemption. Additional Requirements.</b>	<b>Rule 12.1.A.</b>
<b>Rule *121.2</b>	<b>When Appraisal Unnecessary.</b>	<b>Rule 12.1.B.</b>
<b>Rule *121.3</b>	<b>Allowance.</b>	<b>Rule 12.1.C.</b>
<b>Rule *121.4</b>	<b>Voluntary Distribution.</b>	<b>Rule 12.1.D.</b>

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *122.1</b>	<b>Allowance to Surviving Spouse of Intestate. Additional Requirements.</b>	<b>Rule 12.2.A.</b>
<b>Rule *122.2</b>	<b>Conclusiveness of Averments.</b>	<b>Rule 12.2.B.</b>
<b>Rule *122.3</b>	<b>Appraisal. Notice. Confirmation.</b>	<b>Rule 12.2.C.</b>
<b>Rule *123.1</b>	<b>Petition to Enforce the Rights of an Electing Spouse under Chapter 22 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §2201 et. seq.).</b>	<b>Rule 12.3.A.</b>
<b>Rule *123.2</b>	<b>Petition to Restrain the Payment of Transfer of Property under Section 2211(d) of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §2211(d)).</b>	<b>Rule 12.3.B.</b>
<b>Rule *123.3</b>	<b>Petition to Extend the Time for a Surviving Spouse to Elect to Receive an Elective Share in Accordance with Section 2210(b) of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §2210(b)).</b>	<b>Rule 12.3.C.</b>
<b>Rule *124.1</b>	<b>Appointment. Additional Requirements.</b>	<b>Rule 12.4.A.</b>
<b>Rule *124.2</b>	<b>Compensation.</b>	<b>Rule 12.4.B.</b>
<b>Rule *125.1</b>	<b>Minor's Estate. Appointing Judge.</b>	<b>Rule 12.5.A.</b>
<b>Rule *125.2</b>	<b>Minor's Estate. Exhibits.</b>	<b>Rule 12.5.B.</b>
<b>Rule *125.3</b>	<b>Minor's Estate. Restricted Account.</b>	<b>Rule 12.5.C.</b>
<b>Rule *125.4</b>	<b>Minor's Estate. When Guardian Unnecessary.</b>	<b>Rule 12.5.D.</b>
<b>Rule *125.5</b>	<b>Minor's Estate. Allowances.</b>	<b>Rule 12.5.E.</b>
<b>Rule *126.1</b>	<b>Appointment of a Trustee. Exhibits.</b>	<b>Rule 12.6.A.</b>
<b>Rule *127.1</b>	<b>Discharge of a Fiduciary. Additional Provisions.</b>	<b>Rule 12.7.A.</b>
<b>Rule *127.2</b>	<b>Discharge of a Personal Representative. Section 3184 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3184).</b>	<b>Rule 12.7.B.</b>

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *127.3</b>	<b>Fiduciaries in Military Service. Appointment of Substituted Fiduciary Pro Tem. Section 4301 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §4301).</b>	<b>Rule 12.7.C.</b>
<b>Rule *128.1</b>	<b>Partition. Additional Provisions.</b>	<b>Rule 12.8.A.</b>
<b>Rule *129.1</b>	<b>Petitions for Leave to Sell Real Property at Public Sale under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate, Estates and Fiduciaries Code.</b>	<b>Rule 12.9.A.</b>
<b>Rule *130.1</b>	<b>Petitions for Leave to Sell or Exchange Real Property at Private Sale under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate, Estates and Fiduciaries Code.</b>	<b>Rule 12.10.A.</b>
<b>Rule *130.2</b>	<b>Petitions to Fix or Waive Additional Security under Sections 3351 and 7141 of the Probate, Estates and Fiduciaries Code.</b>	<b>Rule 12.10.B.</b>
<b>Rule *131.1</b>	<b>Petitions for Leave to Mortgage or Lease Real Property under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate, Estates and Fiduciaries Code.</b>	<b>Rule 12.11.A.</b>
<b>Rule *132.1</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.) . Public Sale. Contents of Petition. Additional Requirements.</b>	<b>Rule 12.12.A.</b>
<b>Rule *132.2</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.). Public Sale. Exhibits.</b>	<b>Rule 12.12.B.</b>
<b>Rule *132.3</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.) . Public Sale. Notice. Confirmation. Security.</b>	<b>Rule 12.12.C.</b>
<b>Rule *132.4</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code 20 Pa. C.S. §8301 et seq.). Private Sale. Contents of Petition. Additional Requirements.</b>	<b>Rule 12.12.D.</b>

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *132.5</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.). Private Sale. Exhibits.</b>	<b>Rule 12.12.E</b>
<b>Rule *132.6</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.) . Private Sale. Security.</b>	<b>Rule 12.12.F</b>
<b>Rule *132.7</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.). Mortgage.</b>	<b>Rule 12.12.G</b>
<b>Rule *132.8</b>	<b>Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.). Real Estate or Fiduciaries in Other Counties.</b>	<b>Rule 12.12.H</b>

#### Reviews

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *135</b>	<b>Petition for Review.</b>	<b>Rule 12.16.A.</b>
<b>Rule * 136</b>	<b>Petitions for Declaratory Judgment.</b>	<b>Rule 1.2.P.</b>

#### Incapacitated Persons

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *142.1</b>	<b>Petitions Under Chapter 55 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5501, et seq.) .</b>	<b>Rule 14.2.A.</b>
<b>Rule *142.2</b>		
<b>Rule *142.3</b>		
<b>Rule *142.4</b>		
<b>Rule *142.5</b>		
<b>Rule *143.1</b>	<b>Practice and Procedure. In General.</b>	<b>Rule 14.2.B.</b>
	<b>Practice and Procedure. Small Estates.</b>	<b>Rule 14.2.C.</b>
	<b>Practice and Procedure. Special Petitions.</b>	<b>Rule 14.2.D.</b>
	<b>Practice and Procedure. Modification of Existing Orders and Adjudication of Capacity.</b>	<b>Rule 14.2.E.</b>

**Distribution**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *145</b>	<b>Accounts and Distribution.</b>	<b>Rule 6.10.C.</b>

**Short Title**

<u>Rescinded Rule No.</u>	<u>New Title</u>	<u>New Rule No.</u>
<b>Rule *161(b)</b>	<b>Philadelphia Orphans' Court Division Rules.</b>	<b>Rule 17.1.A.</b>

**Former Philadelphia Local Rule Number in [ ]**

**LOCAL RULES**

**Rule 1.2.A. Petitions, Motions and Other Applications. [Rule \*1.1]**

Except for matters required to be filed with the Auditing or Hearing Judge:

(1) ***Matters not Requiring Notice.*** Petitions for citations and other petitions, motions and applications that do not require notice, or matters wherein consents of all parties in interest are attached, shall be filed with the Clerk, who shall transmit the matter to the Motion Judge or other appropriate Judge of this Division. Counsel shall certify on the backer of the document filed that no notice is required or that consents of all parties in interest are attached.

(2) ***Matters Requiring Notice.*** Where notice of the presentation of any petition, motion or other application is required to be given to counsel of record or to any party in interest:

(a) The moving party or counsel for the moving party shall give notice of the presentation of the matter. The notice shall state that unless written objections are filed with the Clerk within twenty (20) days of the date of the notice (or any longer period required by the Rule of Court or Act of Assembly), the Court will assume that the matter is uncontested. The date of the notice shall be the date of mailing, publication or service of the notice.

(b) A certification by counsel listing the persons notified and stating the date and manner of service, together with a copy of the notice given, shall be bound with the petition, motion or other application as a separate exhibit.

**Probate Section Comment:** The Clerk may design a standard printed form to be used as a certification of service of notice in all cases. Neither the notice nor the certification of notice is to be contained in the averments of the petition or motion itself. Service of notice may be by personal service, regular mail, certified mail or publication depending upon type of petition and

the location and identity of the person to be served with notice. See Sup. Ct. O.C. Rules 5.1 - 5.5.

(c) On the same day as, or the next business day following the date of the notice, the moving party or counsel for the moving party shall file the matter with the Clerk, who shall retain it until the expiration of the notice period.

(d) Objections to a petition, motion or other application shall be filed in writing with the Clerk on or before the last day of the notice period. The party objecting shall send simultaneously a copy of the objections to the moving party or counsel for the moving party.

(e) After the expiration of the notice period, the Clerk shall transmit the petition, motion or other application, together with any objections thereto, to the Motion Judge or other appropriate Judge of this Division, who shall set a time and place for hearing or making such other disposition thereof as the Judge deems proper.

(3) ***Motion Judge.*** From time to time, the Administrative Judge shall designate a judge of this Division who shall be known as the Motion Judge, to act pursuant to these Rules.

**Rule 1.2.B. Argument List. [Rule \*1.2]**

(1) ***When Heard.*** The argument list will be heard at 10 a.m. on the third Wednesday of each month except July, August and September.

(2) ***Matters Heard.*** Exceptions to adjudications, supplemental adjudications, opinions, reports of auditors or masters appointed by other than an Auditing or Hearing Judge, or orders and decrees of a judge hearing a certification of the record; and motions for new trial or for judgment n.o.v. in jury trials shall be heard on the argument list. Preliminary objections will not

be heard on the argument list.

(3) ***Listing.*** All matters shall be placed on an argument list at the time filed, in the manner set forth in Rule 1.2.B.(3)(a) and (b). Counsel for the petitioner or exceptant shall forthwith send notice of the date of the argument list on which such matters have been placed to all counsel of record.

(a) Counsel for the petitioner or exceptant may select a particular argument list at the time of filing by informing the Clerk of the monthly list desired. An argument list may be selected no later than 3 p.m. on the third Wednesday preceding the call of that list. Counsel may not select a list which is later than the third argument list scheduled after the filing date.

(b) If counsel for the petitioner or exceptant does not select a particular argument list at the time of filing, the Clerk shall place the matter on the third argument list therefrom. The Clerk shall forthwith send notice of said placement to said counsel, who shall notify all counsel of record as provided above.

(c) Counsel for any party in interest may request a matter on an earlier argument list by filing a praecipe with the Clerk which designates the particular monthly list desired. Such praecipe may be filed not later than 3 p.m. on the seventh Wednesday preceding the call of the designated list, except that in the case of a praecipe filed by counsel for the petitioner or exceptant, such praecipe may not be filed later than 3 p.m. on the third Wednesday preceding the call of the designated list. If more than one such praecipe is filed, the matter shall be heard on the earliest argument list designated which complies with the time limitations stated above. Counsel for the party requesting a matter

to be placed on an earlier argument list shall forthwith send notice to all counsel of record which specifies the date of the earlier list.

**(4) Briefs.**

(a) Four copies of the brief for the petitioner or exceptant shall be filed with the Clerk not later than 3 p.m. on the third Wednesday preceding the call of the list. The briefs shall be typewritten or printed, with pages numbered consecutively, and shall contain, in the following order:

- (i) an index;
- (ii) a statement of the questions involved, as required by the Rules of the Supreme Court, including the manner in which the question was disposed of by the Judge, auditor or master;
- (iii) a copy of the adjudication or opinion of the Hearing Judge, or of the report of the auditor or master to which exceptions have been filed;
- (iv) a copy of the exceptions;
- (v) in cases begun by petition, copies of the pertinent docket entries and of the pleadings;
- (vi) a copy of the will and codicils or trust instrument and any other relevant documents;
- (vii) a history of the case; and
- (viii) the argument.

(b) Other parties in interest shall file four copies of their briefs, with the Clerk no later than 3 p.m. on the Wednesday preceding the call of the list. The brief shall be

typewritten or printed with pages numbered consecutively and shall contain an argument, preceded, if desired, by a counter-statement of the questions involved and a counter-history of the case.

(c) Copies of the briefs, filed with the Clerk shall be delivered forthwith to counsel of record for opposing parties.

(d) Typewriting-Typewriting shall be legible, and, except for quotations, shall be double spaced.

(e) Reproduction of Documents-Reproduction of documents and exhibits will not be accepted by the Court unless clearly legible.

(5) ***Absence of Counsel.*** The argument list will be called three times. On the third call, whether or not counsel be present, a case may, in the discretion of the Court, be disposed of finally or stricken from the list. A case which has been stricken from the list will not be placed on a subsequent list, except with the express permission of the Administrative Judge.

(6) ***Oral Argument.*** Oral argument shall not exceed thirty (30) minutes per party except by special leave obtained from the Administrative Judge prior to the argument date.

**Rule 1.2.C. Certification of Documents. Copies. [Rule \*1.4]**

When a document is submitted to the Court, it shall be certified by counsel to be the original or a true and correct copy thereof.

**Rule 1.2.D. Costs. [Rule \*1.5]**

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

**Rule 1.2.E. Decrees. Satisfaction and Enforcement. [Rule \*1.6]**

(1) ***Satisfaction. Docket Acknowledgment.*** Acknowledgment of satisfaction of all sums of money or property ordered to be paid or delivered by any award or decree of the Court may be made on the docket, and any party distributing, paying, or delivering money or property may, with leave of Court, require such satisfaction to be so entered by the party receiving the money or property, or by such party's counsel.

(2) ***Order to Enforce Decree or Adjudication.*** Any party in interest may petition the Court for an order to enforce compliance with the provisions of a decree or an adjudication. A copy of such order shall be served upon the respondent personally not less than ten (10) days before the date designated therein for payment or delivery.

(3) ***Writ of Enforcement.*** If the respondent fails to comply with the order, the petitioner may petition the Court for an appropriate writ to enforce compliance therewith.

**Rule 1.2.F. Certificates of Appointment. Fiduciaries. [Rule \*1.7]**

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

**Rule 1.2.G. Identification of Signatures. [Rule \*1.8]**

The name of each person signing any petition, pleading or document to be filed with the Court, shall be printed or typewritten beneath the signature.

**Rule 1.2.H. Witnesses. Attachment. [Rule \*1.9]**

Attachment to compel the appearance of a witness will not be issued, except under special circumstances, unless the witness shall have been served with a subpoena at least five (5) days before the date fixed for hearing.

**Rule 1.2.I. Individual Sureties. [Rule \*1.10]**

(1) *Application for Approval. Affidavit.* Except as otherwise provided by paragraph (3) of this Rule, an application for the approval of an individual surety shall be accompanied by an affidavit of the proposed surety setting forth

- (a) such individual's name, residence address, and occupation;
- (b) the location of real property owned by such individual;
- (c) the place, book and page of the recording of the deed thereto;
- (d) the name in which title is held and a statement that no other person has any interest in the real property, and that the title is not subject to any express or constructive trust;
- (e) the encumbrances upon the real property;
- (f) the current tax assessment of the real property;
- (g) a list of all other undertakings upon which the individual is surety; and

(h) such individual's net financial worth, after the payment of such individual's debts, engagements and liabilities.

(2) ***Approval by Clerk.*** When the bond does not exceed \$2,000, the surety may be approved by the Clerk.

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

**Rule 1.2.J. Corporate Sureties. Approval. [Rule \*1.11]**

Surety companies duly qualified under the provisions of Rules of Board of Judges of the Court of Common Pleas may become surety on any bond or obligation required to be filed in the Court.

**Rule 1.2.K. Corporate Fiduciaries. Approval. Security. [Rule \*1.12]**

(1) ***In General.*** Corporations having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court; provided that a current certificate evidencing the approval of the state banking department, or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers, is on file with the Clerk.

(2) ***Period of Approval.*** The approval granted by the Court under paragraph (1) of

this Rule shall be for a period of one year, and, thereafter, annually, subject, however, to compliance by the corporation with these Rules and with such other rules and regulations governing approval or continuance as the Court will, from time to time, promulgate.

(3) **Security.** Except when required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

**Rule 1.2.L. Individual Fiduciaries. Assets and Investments. [Rule \*1.13]**

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

(2) **Deposit of Uninvested Funds.** All funds held uninvested shall be deposited in a bank or banks, or trust company or trust companies, or a savings and loan association or savings and loan associations, the deposits of which are insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, in such manner as to obtain the maximum deposit insurance coverage.

**Rule 1.2.M. Trusts Inter Vivos. [Rule \*1.14]**

The Rules of Court applicable to testamentary trusts shall apply to trusts inter vivos as far as appropriate.

**Rule 1.2.N. Concurrent Jurisdiction. [Rule \*1.15]**

If any other Division of the Court of Common Pleas has previously assumed jurisdiction over any matter over which it has concurrent jurisdiction with the Orphans' Court Division, jurisdiction will not be entertained by this Division except upon written order of the President Judge of the Court of Common Pleas.

**Rule 1.2.O. Depository of the Court. [Rule \*1.16]**

(1) ***Official Depository.*** The official depository of the Orphans' Court Division shall be a banking institution designated by the Board of Judges of the Court of Common Pleas.

(2) ***Deposits.*** Moneys and securities paid or delivered into the Court shall immediately, upon receipt thereof by the Clerk, be deposited by the Clerk with the Court depository to the credit of the proper estate or proceeding.

(3) ***Withdrawals.*** Withdrawals of money from the depository shall be authorized by decree or award of the Court and effected by check or order drawn by the Clerk, countersigned by a judge of the Court.

(4) ***Accounting by Clerk.*** In January of each year, or at such other times as the Court may direct, the Clerk shall settle the depository account at the bank and shall present to the Court an account of the moneys paid into and out of the account, and shall exhibit the transaction ledger and bank statement as a voucher for the correctness thereof.

**Rule 1.2.P. Petitions for Declaratory Judgment. [Rule \*136]**

(1) ***Commencement of Action.*** Every action for declaratory judgment shall be commenced by petition and citation.

(2) ***Contents of Petition.*** The petition shall contain sufficient averments to entitle petitioner to the declaratory relief requested under the Pennsylvania Declaratory Judgments Act including:

(a) a concise statement of the facts relied upon to justify a declaratory judgment proceeding;

(b) the questions(s) of law with respect to which declaratory relief is requested;

(c) a list of all persons whose interest may be affected by the resolution of the questions(s); and

(d) a prayer for the relief desired.

(3) ***Exhibits.*** The following exhibits shall be attached to the petition:

(a) a copy of the will or trust or other governing instrument; and

(b) a copy of any other document to be construed.

(4) ***Final Decree.*** A form of final decree setting forth the declaratory relief shall be attached to the face of the petition.

**Probate Section Comment:** The use of Declaratory Judgments Act (Chapter 75, subchapter C of Title 42 Pa. C.S.) in appropriate cases has been viewed favorably by the Philadelphia Orphans' Court Division: Pew Memorial Trust II, 5 D.&C. 3d 698 (1977), and Annenberg Trust, 28 Fiduc. Rep. 75 (1977). This Rule is intended to provide the procedural framework for commencing a proceeding for declaratory relief in appropriate circumstances.

## CONSTRUCTION AND APPLICATION OF RULES

### **Rule 2.3.A. Definitions. [Rule \*23.1]**

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

- (1) “Court of Common Pleas” means Court of Common Pleas of Philadelphia County;
- (2) “Court” means the Orphans’ Court Division of the Court of Common Pleas of Philadelphia County;
- (3) “President Judge” means the President Judge of the Court of Common Pleas of Philadelphia County;
- (4) “Administrative Judge” means the Administrative Judge of the Orphans’ Court Division of the Court of Common Pleas of Philadelphia County;
- (5) “Clerk” means the Clerk of the Orphans’ Court Division;
- (6) “Register” means the Register of Wills of Philadelphia County;
- (7) “Fiduciary” includes a personal representative, a guardian of the estate of a minor, a guardian of the estate of an incapacitated person, and a trustee;
- (8) “Exception” means a formal written disagreement with an adjudication, opinion, order or decree of a judge;
- (9) “Objection” means an oral or written disagreement with any matter other than that which is covered by an exception; and
- (10) “Verify” means attested to either by:
  - (a) an affidavit sworn to or affirmed before a Notary Public or other officer authorized to administer oaths; or
  - (b) a verified statement which shall set forth that it is subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

## PLEADING AND PRACTICE

### **Rule 3.2.A. Pleadings. [Rule \*32.1]**

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

(1) ***New Matter.*** Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter."

(2) ***Reply.*** A reply shall be required when new matter is set forth in the answer.

(3) ***Preliminary Objections.***

(a) Preliminary objections shall be limited to questions of (i) law, (ii) form, or (iii) jurisdiction, may be filed by any party, and shall be accompanied by one original brief prepared in conformity with Rule 1.2.B.(4)(a)(i)-(ii), (v)-(viii), (4)(c) and (4)(d).

(b) An answer to preliminary objections shall be accompanied by one original brief, prepared in conformity with Rule 1.2.B.(4)(b), (4)(c), and (4)(d), and shall be filed within twenty (20) days after service of the preliminary objections and accompanying brief.

### **Rule 3.2.B. Disposition of Pleadings. [Rule \*32.2]**

(1) ***Failure to Answer a Petition.*** If the respondent fails to file an answer to a petition, the Court may enter a decree granting the prayer of the petition.<sup>1</sup>

(2) ***Failure to Reply.*** If the petitioner fails to file a reply to an answer which contains

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<sup>1</sup>If an answer is filed which raises issues of fact, either petitioner's counsel or respondent's counsel should write to the Administrative Judge and request that the pleadings be assigned to a Hearing Judge for disposition.

new matter, the averments of fact set forth under new matter shall be deemed admitted and the case will be ripe for disposition.

**(3) *Disposition of Preliminary Objections.***

(a) The Assigned Judge shall rule on the preliminary objections. If no judge has been assigned, the Administrative Judge, at the request of any party in interest, shall assign a judge, on a rotation basis, to rule on the preliminary objections.

(b) Preliminary Objections raising questions of fact. Averments of fact raised in preliminary objections shall be deemed admitted if no answer is filed. If an answer is filed which denies averments of fact raised in preliminary objections, the Assigned Judge may schedule an evidentiary hearing.

(c) Preliminary Objections which may be disposed of as a matter of law. If no issues of fact are raised by the preliminary objections and answer, the Assigned Judge shall dispose of the preliminary objections as a matter of law, and shall deem all averments of fact in the pleading to which the preliminary objections have been filed to be admitted for the purpose of ruling on the preliminary objections.

(d) Oral argument on preliminary objections may be scheduled at the discretion of the Assigned Judge.

**(4) *Joinder of Issue.*** No formal joinder of issue is required.

(a) Issues of Fact. Issues of fact will not be heard on the argument list. Except as otherwise provided by Rules 7.1.A. and 10.2.C., when an issue of fact is raised by the pleadings, the Administrative Judge, upon the written request of any party, may refer the matter to a master, to the Auditing Judge if an account is to be filed, or to a

Hearing Judge.

(b) Issues of Law. Pleadings that are closed shall be disposed of in conformity with Rule 3.2.B.(3)(a), (c) and (d), dealing with disposition of preliminary objections.

**Rule 3.4.A. Form. Additional Requirements. [Rule \*34.1]**

(1) *Typing. Endorsement.* Every pleading shall be typewritten, double-spaced, or printed, and shall be endorsed with the name of counsel appearing in court.

(2) *Signature and Certification.* All pleadings shall be signed and verified by the parties. If this is impracticable, they may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to do so shall be set forth.

(3) *Decree.* Every decree shall bear the caption of the case and shall be attached to the face of the petition.

(4) *Consents.* The affidavit to the petition shall recite that all necessary consents are attached or shall set forth the names of the persons who do not consent. The Court may direct that notice be given or that a citation be issued, directed to persons who do not consent to show cause why the prayer of the petition shall not be granted.

**Rule 3.5.A. Service of Copies of Pleadings. Exceptions. Objections. [Rule \*35.1]**

(1) *Pleadings. In General.* A copy of every pleading filed in a case shall be promptly served upon counsel of record for all parties in interest.

(2) *Exceptions. Objections.* Copies of exceptions or written objections shall be delivered to the Auditing or Hearing Judge and served upon the accountant or counsel to the

accountant, and upon all parties adversely affected thereby, or their counsel of record.

**Rule 3.5.B. Citation Procedure. [Rule \*35.2]**

(1) When, pursuant to the procedure of Rule 1.2.A.(1), a decree awarding a citation has been signed, the Clerk shall prepare the citation and the appropriate number of duplicate copies, returnable on the date fixed in the decree, or if no return date is so fixed, as counsel directs. Counsel shall obtain the citation and copies from the Clerk and shall arrange for service of the copies of the citation and of the petition. Proof of service shall be by return of the sheriff, or by affidavit or the person mailing, publishing, or personally serving the citation, or by written acceptance of service by or on behalf of the person to whom the citation is directed.

(2) Except as pertaining to citations issued pursuant to (a) Chapter 55 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §5511) regarding alleged incapacitated persons and any rules pertaining thereto, and (b) Rule 12.3.B. pertaining to a petition by a surviving spouse to restrain the payment or transfer of property, the original citation with proof of service annexed or endorsed on a form printed on the reverse side shall be filed with the Clerk.

(3) When a person to whom the citation is directed has not filed an answer or preliminary objection, a motion for a default order may be presented to the Court without further notice.

(4) When a party to whom a citation has been awarded fails or is unable to serve the citation and petition within the time provided by law, an alias citation may be requested from the Judge who issued the decree awarding said citation. The alias citation and petition are to be served in the same manner as the original citation. If the party to whom an alias citation has been

awarded fails or is unable to serve the alias citation within the time provided by law, a pluries citation may be requested from the Judge who issued the decree awarding said alias citation. The pluries citation and petition are to be served in the same manner as the original citation.

**Probate Section Comment:** In selecting the return date when none has been fixed by the Court, counsel should take into consideration the time required to prepare the citation, the time necessary to effect service, the requirements of Section 765 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §765), and Sup. Ct. O.C. Rule 32. Counsel should be mindful of the method of service required in each case.

**Rule 3.6.A. Philadelphia Orphans' Court Division Practice. [Rule \*36.1]**

(1) Except upon agreement of counsel, leave to take depositions, or obtain discovery or the production of documents, may be granted only on petition upon cause shown.

(2) Where leave has been granted by the Court, the procedure relating to depositions, discovery, and the production of documents shall be governed by the order of the Court.

**Rule 3.6.B. Pre-Trial Conference. [Rule \*36.2]**

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

- (a) the identification of the issues;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; and
- (d) such other matters as may aid in the disposition of the action.

(2) The Court may make an order reciting the action taken at the conference,

identifying the issues for trial, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered.

**Rule 3.6.C. Perpetuation of Testimony and Court Records. [Rule \*37]**

To the extent not provided for by special order in a particular case, the practice and procedure relating to perpetuation of testimony and Court records shall conform to the practice and procedure in the Trial Division of the Court of Common Pleas of Philadelphia County.

## NOTICE

### **Rule 5.1.A. Method. Legal Periodical. [Rule \*51.1]**

*The Legal Intelligencer* shall be the legal periodical for the publication of legal notices in Philadelphia County, whenever publication in a legal periodical is required by Act of Assembly, or by Rule or order of Court.

### **Rule 5.1.B. Method. Public Sale of Real Property. [Rule \*51.2]**

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

- (1) by advertisement once a week for three successive weeks in a newspaper of general circulation in each county wherein any portion of the real estate is located and in the legal publication, if any, designated by Rule of Court of that county for publication of notices, the first publication to be made not less than twenty-one (21) days before the date of sale;
- (2) by posting a notice at a conspicuous place on the premises; and
- (3) at least twenty (20) days prior to sale, by notice to each party in interest by service on the attorney appearing of record for such party, or if there is no such attorney, by personal service or, if the party's residence is known, by delivery at such residence or by mail.

The advertisement and notices shall specify the time and place of the proposed sale and shall clearly identify the property by the street address or other adequate description.

**Rule 5.2.A. Method. When No Fiduciary. [Rule \*52.1]**

Whenever notice is to be given to a person who is not sui juris, for whom there is no guardian, trustee, attorney-in-fact or other fiduciary, notice shall be given by service upon such person, if he or she is over fourteen (14) years of age, and, in all such cases, upon

- (1) such person's next of kin;
- (2) such person's spouse;
- (3) the person with whom such person resides or by whom he or she is maintained;
- (4) the superintendent or other official of the institution having custody of such person; or
- (5) in such manner as the Court by special order may direct.

**Rule 5.2.B. Method. Presumed Decedents and Unascertained Persons. [Rule \*52.2]**

Whenever notice is to be given to an absentee, a presumed decedent, or to an unknown or unascertained person, it shall be given in the manner provided by Act of Assembly, or, in the absence thereof, in such manner as the Court by special order shall direct.

**Rule 5.4.A. Return of Notice. Additional Requirements. [Rule \* 54.1]**

**(1) *In General.***

(a) Copy of Notice to be Attached. A copy of the notice required to be given shall be attached to the petition or return and shall set forth the date notice was given.

(b) 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.

(c) Registered or Certified Mail. Return of notice by registered or certified mail shall set forth 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 cause to believe that such notice was not received by the person to be notified, it shall be so stated in the return. When a person resides in a foreign country, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

(d) Publication. Return of notice by publication shall consist of proofs of publication, together with affidavits of publication by the publisher or its agent.

(2) ***Real Property. Return of Public Sale.*** Return of public sale of real property for the purpose of approval or confirmation by the Court shall be in the form of an affidavit, which shall set forth

(a) the notice given as provided by paragraph (1);

(b) the price obtained; and

(c) the name and address of the purchaser and an averment that the purchaser

was the highest bidder.

## ACCOUNTS AND DISTRIBUTION

### **Rule 6.1.A. Form of Accounts. [Rule \*61.1]**

(1) Accounts shall be stated in conformity with the Uniform Fiduciary Accounting Principles and accompanying commentaries, illustrations and forms of account recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts or in such other form of account as may be approved by the Supreme Court of the Commonwealth.

(2) Every account filed with the Register or Clerk shall be signed by each accountant and shall be verified by at least one accountant. The verification to a personal representative's account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the account.

### **Rule 6.3.A. Time and Contents of Notice. [Rule \*63.1]**

Notice shall be given at least fifteen (15) days prior to the audit and shall set forth:

(1) the date and place of the audit, the time and the courtroom to be furnished upon request unless given in the notice;

(2) that (except as to non-residuary legatees or claimants whose legacies or claims have been or will be satisfied in full) a copy of the account and a copy of the will or trust instrument accompany the notice, or have been furnished previously, or will be sent upon request, as the case may be, and that any person who objects to the transactions shown in the account must appear in person or by counsel at the audit under penalty that the Court may otherwise assume that there is no objection and may approve the account as stated;

(3) the accountant's understanding of the nature of the claim, interest or objection of the party notified; whether the claim, interest or objection is admitted or contested; if admitted, whether it will be paid in full or in part, and, if contested, that an appearance in person or by counsel must be made at the audit to press any such claim, interest or objection;

(4) the amount of any receipt, disbursement, claim for counsel fee and/or fiduciary's commission, which does not appear in the account and which is to be reflected in the adjudication; and

(5) the accountant's interpretation of any dispute, or fairly disputable question, known to or reasonably ascertainable by the accountant, together with a copy of the instrument or material parts thereof containing any provision which forms the basis of the dispute, and a statement that if the person notified does not agree with the accountant's interpretation, he or she must appear at the audit in person or by counsel to present his or her contention, under penalty for failure to appear that the Court will assume that he or she agrees with the accountant's interpretation.

**Probate Section Comment:** Confirmation of the account of a terminated trust, guardianship or agency by annexation is authorized under Section 3501.2 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §3501.2). Confirmation of the account of a distributed estate or trust is similarly authorized under Section 7188 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §7188). Notice of such annexation (or piggybacking) of an account is required for confirmation.

**Rule 6.3.B. Supplemental Notice. [Rule \*63.2]**

In any case in which an audit has been continued, notice of the rescheduled audit date must be given to parties in interest by the accountant or by such other person as the Court may direct.

**Rule 6.4.A. Filing for a Particular Audit. [Rule \*64.1]**

Subject to the provision of Sup.Ct. O.C. Rule 6.4, an account to appear on a particular audit list must be filed not later than 3 p.m. on the fifth Wednesday preceding the day on which such list will be called.

**Rule 6.4.B. When Audit Lists Called. Postponed or Adjourned. [Rule \*64.2]**

Generally, the audit lists shall be called during the week beginning with the second Monday of September and the weeks beginning with the first Monday of other months. The call of an audit list may be postponed or adjourned at the discretion of the Auditing Judge or the Court. When the first Monday of the month falls on a holiday on which the Courts are closed, the audit list shall be called on the next business day.

**Rule 6.6.A. Advertisement of Accounts. Posting. [Rule \*66.1]**

The Clerk shall give notice of all accounts and of the time and place of the call of the audit list by:

(1) advertising once a week for two (2) successive weeks in The Legal Intelligencer and in one Philadelphia daily newspaper of general circulation; and

(2) posting copies of the audit lists in the office of the Clerk and on the day of the audit in or about the several courtrooms.

**Rule 6.6.B. Division of Accounts. [Rule \*66.2]**

Accounts duly advertised for audit on a particular day shall be divided by the Clerk, under the supervision of the Court, into substantially equal audit lists, each of which shall be assigned by lot to a judge of the Court.

**Rule 6.9.A. Filing of the Petition for Adjudication and Statement of Proposed Distribution. [Rule \*69.1]**

The petition for adjudication and statement of proposed distribution shall be filed with the Clerk at the time the account is filed. No account shall be accepted for filing and advertisement unless accompanied by the petition for adjudication and statement of proposed distribution.

**Probate Section Comment:** Those filing accounts are advised to see Rule 6.9.D. for other papers that may be required to be filed at the time that the account is filed.

**Rule 6.9.B. Forms. Execution. Verification. [Rule \*69.1.1]**

Except by leave of the Auditing Judge, forms of the petition for adjudication and statement of proposed distribution authorized by the Court shall be used. The petition for adjudication and statement of proposed distribution shall be signed by each accountant and verified by at least one of them.

**Rule 6.9.C. Additional Receipts and Disbursements. [Rule \*69.1.2]**

Receipts and disbursements subsequent to the date to which the account was stated and to be included in the adjudication shall be set forth in the petition for adjudication and statement of proposed distribution and in the audit notice.

**Probate Section Comment:** The Court prefers that claims for counsel fees and fiduciary commissions appear as disbursements in the account. Rule 6.3.A.(4) states that claims for counsel fees and fiduciary commissions which are not included in the account must be included in the audit notice. Such claims should not be set forth on the attorney's appearance slip unless the requirements of Rule 6.3.A. concerning notice have been satisfied. Generally, appearance slips should be used to inform the Court of minor errors or discrepancies in the account, or additional filing fees and other nominal expenses incurred by the accountant since the closing date of the account that are to be included in the adjudication.

**Rule 6.9.D. Papers to Be Filed with Accounts. [Rule \*69.1.3]**

(1) *All Accounts.* At the time of filing of an account, counsel shall file:

- (a) a petition for adjudication and statement of proposed distribution;
- (b) copies of all agreements with respect to settlements and compromises;
- (c) copies of agreements, if any, with respect to the accountant's

compensation, if credit therefor is taken in the account or requested at the audit;

(d) a waiver of an income accounting by those entitled to the income, if the account does not contain a complete income accounting and such a waiver is not attached to the account;

(e) the official receipt for any inheritance tax paid during the period of the accounting; and

(f) a statement of the method and date of giving notice to all parties in interest of the filing of the account and the petition for adjudication and statement of proposed distribution and of the time of the audit, or alternatively, an averment that such notice shall be given and a certification thereof shall be submitted at the audit as hereinafter set forth.

In those instances where notice has been given, a copy of said notice, as well as the names and addresses of the parties notified, shall be appended to the petition for adjudication and

statement of proposed distribution. In those instances where notice is yet to be given, a copy of said notice, as well as the names and addresses of the parties notified, shall be submitted to the Court at audit, together with a statement executed by the accountant or the accountant's counsel certifying that notice has been given.

(2) ***Accounts of Personal Representatives.*** In addition to the papers required by Rule 6.9.D.(1), at the time of the filing of an account of a personal representative, counsel shall file:

- (a) the original letters, together with proof of advertisement thereof; and
- (b) a typewritten copy of the inventory and of the will and codicils, certified by the accountant or counsel to be true and correct.

(3) ***Accounts of Trustees.*** In addition to the papers required by Rule 6.9.D.(1), at the time of the filing of an account of a trustee, counsel shall file:

- (a) the original letters or the original trust instrument, if not submitted at a prior audit;
- (b) a copy of the trust instrument, certified by the accountant or counsel to be true and correct; and
- (c) a preliminary audit statement prepared on the form supplied by the Court and signed by the attorney who will appear for the accountant at the audit.

(4) ***Accounts of Guardians of the Estates of Minors.*** In addition to the papers required by Rule 6.9.D.(1), at the time of the filing of an account of a guardian of the estate of a minor, counsel shall file:

- (a) a copy of the will, deed or decree by which the guardian was appointed;
- (b) a statement that notice of the audit has been given to all known, unpaid

claimants;

(c) a statement of the former minor or, if the former minor has been adjudicated an incapacitated person, of the guardian of the estate of the former minor, setting forth the date the former minor attained majority; and that the former minor or the guardian of the estate of the former minor:

- (i) has examined the account;
- (ii) approves the account and requests that it be confirmed; and
- (iii) agrees that the guardian of the estate of the minor shall be

discharged upon distribution to the former minor or to the guardian of the estate of the former minor of the balance shown in the account, subject to such additional credits as may be authorized by law and set forth in the adjudication.

(5) ***Accounts of Guardians of the Estates of Incapacitated Persons.*** In addition to the papers required by Rule 6.9.D.(1), at the time of the filing of an account of a guardian of the estate of an incapacitated person, counsel shall file:

(a) a statement of the manner and date of appointment of the guardian and a copy of the decree by which the guardian was appointed; and

(b) a statement of whether a personal representative has been appointed if the incapacitated person is deceased; and if so, the date and place of grant of letters and a valid certificate of appointment.

(6) ***Distribution to Foreign Fiduciary.*** In addition to the papers required by Rule 6.9.D.(a)(1), at the time of filing an account, when a share of the estate is distributable to a foreign fiduciary, counsel shall file:

(a) a certificate of appointment issued within three months of the date of the filing or a copy of the instrument evidencing the authority of the fiduciary to receive the fund, certified by the proper authorities at the place of issuance to be in effect at the time of the filing;

(b) an affidavit by the foreign fiduciary setting forth whether or not an ancillary administrator has been appointed in Pennsylvania, together with averments that:

(i) the foreign fiduciary is authorized, under the laws of the jurisdiction in which the foreign fiduciary qualified, to receive the fund to be distributed;

(ii) the filing of security has been waived, or the amount of the bond which has been filed and the name of the surety; and

(iii) there are no creditors within the Commonwealth of Pennsylvania of the estate for which the foreign fiduciary has been appointed and no rights of any resident of Pennsylvania will be adversely affected by the requested distribution.

(7) ***Submission of Original Documents.*** Unless otherwise ordered by the Auditing Judge, original documents, including, but not limited to, letters testamentary and deeds of trust, need not be refiled if they had been filed in connection with a prior proceeding and counsel certifies the date of the prior submission.

**Probate Section Comment:** Paragraph (5) applies to those who have been adjudged an incapacitated person by the Court, whether under Chapter 55 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5501 et seq.) or its predecessor.

The requirements of paragraph (6) are based on Chapter 41 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §4101 et seq.). Particular attention is directed to Section 4111 and its correlation with paragraph (6)(b)(iii) of the Rule. Under Section 4111, the Court has broad discretionary power to refuse distribution of a share of an estate to the domiciliary personal representative of a deceased nonresident creditor or other distributee and to require an ancillary administration in Pennsylvania.

Paragraph (7) describes situations in which original documents need not be filed with the audit papers. Letters testamentary, letters of administration, inheritance tax receipts and deeds of trust which are filed with the audit papers will customarily be returned to counsel once an adjudication is issued.

**Rule 6.9.E. Appearances. [Rule \*69.2]**

Counsel for the accountant shall personally appear at the call of the audit list and enter an appearance on the form supplied by the Court. Counsel for any other party in interest who desires to raise objections or otherwise to be heard (or the accountant or other party in interest appearing pro se) shall also personally appear at the call of the audit list and enter an appearance on the form supplied by the Court.

**Rule 6.9.F. Partition, Allotment or Distribution of Proceeds of Real Property. [Rule \*69.3]**

When an accountant or any party in interest requests a partition, allotment or distribution of proceeds of real property, the Court shall make such orders as are deemed advisable concerning the appointment of appraisers; the furnishing of an information certificate or distribution policy from a title insurance company, drawn in the name of the Commonwealth to the use of all persons interested; provisions for owelty; the giving of notice; and such other requirements as may be necessary under the circumstances to protect the parties.

**Rule 6.10.A. Under Direction of Auditing Judge. [Rule \*70.1]**

Objections to an account or statement of proposed distribution shall be made at the audit in such manner as the Auditing Judge shall direct.

**Rule 6.10.B. Objections. [Rule \*76]**

**(1) *Family Exemption.***

(a) Prior to Audit. Written objections to the allowance of the family exemption shall be filed with the Clerk within twenty (20) days of the filing of the petition for allowance. Such objections shall be referred to the Auditing Judge for disposition, or, in special circumstances the petition will be assigned to a judge for hearing and determination. In the absence of objection, the family allowance may be granted on petition.

(b) Audit. Objection to the allowance of the family exemption at the audit shall be presented in such form and shall be disposed of in such manner as the Auditing Judge may deem proper.

**(2) *Allowance to Surviving Spouse of Intestate.*** Written objections to the setting aside of real or personal property to the surviving spouse of an intestate shall be filed with the Clerk within twenty (20) days of the filing of the petition for allowance. Such objections will be referred to the Auditing Judge for disposition, or, in special circumstances, the petition will be assigned to a judge for hearing and determination. In the absence of objection, real or personal property may be set aside to the surviving spouse of an intestate on petition and subsequent confirmation.

**(3) *Report of Master. Appointment by Auditing Judge or Hearing Judge.***

Objections to the report of a master appointed by an Auditing Judge to assist the Court in the audit of an account, or by a Hearing Judge to whom a case has been assigned, shall be filed with the appointing judge, who shall make such disposition thereof as the Court deems proper.

(4) **Appraisal.** Objections to appraisals shall be filed in writing with the Clerk prior to confirmation or approval, or with the Court on the date fixed for confirmation or approval. Such objections shall be assigned to the Judge who appointed the appraisers for his disposition.

(5) **Real Property. Sale or Mortgage.** Objections to a petition for the proposed sale or mortgage of real property shall be filed with the Clerk within twenty (20) days of the filing of such petition. Such objections will be referred to the Auditing Judge for disposition, or, in special circumstances, the petition will be assigned to a judge for hearing and determination. In the absence of objection, a decree may be entered approving the proposed sale or mortgage of real property.

(6) **Proceeding under Section 3102 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3102) regarding Small Estates. Estates of Minors or Incapacitated Persons.**

Written objections to a petition in a proceeding under Section 3102 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3102) regarding small estates, or to any petition filed in connection with the estate of a minor or the estate of an incapacitated person, other than matters properly presented at the audit of an account, shall be filed with the Clerk within twenty (20) days of the filing of such petition. If no objection is made by any party in interest, a decree may be entered ex parte. If objection is made, the petition shall be assigned to a judge for hearing and determination.

(7) **Not Otherwise Covered by Rule.** Objections not otherwise covered by these Rules shall be presented at such time and place, and in such form, as the Court may direct.

(8) **Effect Upon Distribution.** When the matters which are the subject of a schedule of distribution, or the report of an auditor or master, are so separate and distinct that an objection

to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the schedule of distribution or report shall not be suspended, except as to those matters to which objections have been taken; distribution may proceed as to the remainder; and any party from whom such distribution has been withheld may petition the Court to order distribution.

**Rule 6.10.C. Accounts and Distribution. [Rule \*145]**

The practice and procedure with respect to the filing and audit of accounts, as well as the distribution of the assets comprising the estate, shall conform with the practice and procedure governing trustees' accounts.

**Rule 6.11.A. Schedules of Distribution. [Rule \*72]**

(1) ***Filing.*** When directed by the Auditing Judge or at the election of the accountant, a Schedule of Distribution, in the form approved by the Court, shall be filed with the Clerk. The Auditing Judge, in his or her discretion, may direct that only awards of real property or personal property to be distributed in kind need be included in the schedule of distribution.

(2) ***Certification.*** The attorney for the accountant shall certify that the schedule is correct and in conformity with the adjudication. See (3)(a), (3)(b)(ii) and (6)(b) for additional statements to be included in the certification where appropriate.

(3) ***Consent or notice.***

(a) Written consents to the schedule of distribution may be attached thereto.

The attorney for the accountant shall certify whether or not the parties whose consents are

attached constitute all parties in interest affected by the filing of the schedule and all other parties to whom notice was directed by the Court.

(b) Notice of the filing of the schedule shall be given to all parties in interest affected thereby and to such other parties as the Court may direct, except those parties whose consents are attached. The notice shall state the date of filing, that a copy of the schedule accompanies the notice or will be sent upon request, and that any party who objects to the schedule must file objections within twenty (20) days of the filing of the schedule under penalty that the Court may otherwise assume that there is no objection and may approve the schedule as filed.

(i) Notice shall be given no later than the day of the filing of the schedule, by a letter addressed to the last known address of the party or to his or her attorney of record.

(ii) It shall be sufficient return of notice for the attorney for the accountant to certify on the schedule that due notice of the filing thereof was given as required by this Rule. A copy of the letter of notice and a list of those to whom notice was sent shall be submitted with the schedule.

**(4) *Objections.***

(a) Objections may be filed within twenty (20) days of the filing of the schedule, and shall indicate the basis for the objections and in what respect the schedule fails to conform to the adjudication. In no event may objections raise questions which actually were or could have been raised at the audit of the account or which could be raised by exceptions to the adjudication.

(b) Objections shall be filed in duplicate with the Clerk, who shall deliver a copy to the Auditing Judge. The Auditing Judge shall re-examine the subject matter; may hold a hearing or argument thereon, at the Auditing Judge's discretion; and may make such disposition of the objections as the Auditing Judge deems proper in a supplemental adjudication.

**(5) *Approval.***

(a) Where the consents of all necessary parties are attached, the Court may approve the schedule immediately upon filing. Where notice was given to any party, the Court may approve the schedule twenty (20) days after the filing thereof.

(b) In the absence of objections, the schedule shall become absolute on the date of approval thereof.

(c) Where objections have been filed, any party may file exceptions to the Auditing Judge's disposition of the objections within twenty (20) days thereof. Where the objections are dismissed and the schedule is approved, the schedule shall become absolute on the twentieth day following approval.

(d) Upon absolute approval of the schedule, the accountant shall have the authority to make necessary assignments and transfers of any property awarded, and the schedule will be attached to and become part of the adjudication.

**(6) *Confirmation of Title to Real Property.*** Approval of the schedule of distribution shall constitute confirmation of title in the distributees.

(a) Separate Awards. A schedule of distribution shall set forth separate awards of real property in separate paragraphs.

(b) Description. Certification by Counsel. Real property shall be described in the same detail and with the same particularity as is commonly required to be included in deeds, and, in addition, shall include information pertinent to the derivation of title.

Counsel for the accountant shall certify that counsel or counsel's agent has examined the last recorded deed or the record thereof in the public office for recording deeds in the county in which the real estate is located and that the description in the schedule is in conformity therewith.

(c) Certification by Clerk. The Clerk shall, upon request, certify excerpts from an approved schedule of distribution for recording in any public office for recording deeds.

**Rule 6.11.B. Settlement of Small Estates under Section 3102 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3102). [Rule \*73]**

(1) *Contents of Petition.* A petition for the settlement of a small estate shall set forth:

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

(b) the name and address of the petitioner and petitioner's relationship to the decedent;

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

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

(e) the names, relationships and a brief description of the interests of all persons entitled to share in the decedent's estate under the will or intestate laws; a statement as to whether any of them is a minor, an incapacitated person or deceased, with the name of his or her fiduciary, if any; and a statement as to whether any of them has received or retained any property of the decedent under Section 3101 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3101), or otherwise;

(f) the person or persons, if any, entitled to the family exemption and, if a claim is to be made in the petition, any additional facts necessary to establish the right thereto, as required by Rule 12.1.A.;

(g) a list of the assets of the decedent and the value of each asset, either incorporated in the petition or attached as an exhibit;

(h) an itemized list, either incorporated in the petition or attached as an exhibit, setting forth under separate headings:

(i) all disbursements made prior to the filing of the petition, including the amounts and dates paid, the names of the payees and a description of the purposes of the disbursements; and

(ii) all unpaid claims against the estate, including the amounts of such claims, the names of the claimants, the bases for such claims and indicating which claims are admitted.

In the case of an insolvent estate, such disbursements and unpaid claims shall be listed under separate categories according to the order of priority of payment under Section 3392 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §3392).

(i) an averment as to the status of the inheritance tax;

(j) an averment that twenty (20) days written notice of the presentation of the petition has been given to every unpaid beneficiary, heir or claimant who has not joined in or consented to the petition, and, if the decedent's heirs are unknown, to the Attorney General; and

(k) a prayer for distribution of the personal property to those entitled and, in appropriate cases, for the discharge of the personal representative and the release of any surety.

(2) **Exhibits.** The following exhibits shall be attached to the petition:

(a) a copy of the decedent's will certified by counsel to be a true and correct copy;

(b) consents to the petition signed by those unpaid beneficiaries, heirs and claimants who do not join in the petition, and the names of any of them who do not consent and a copy of the notice which has been given to them; and

(c) a copy of the official Inheritance Tax Assessment and, if an inheritance tax payment was made prior to the date of filing the petition, a copy of the inheritance tax receipt.

(3) **Notice.** Any party in interest who does not join in or consent to the petition shall receive written notice of the intended presentation of the petition to the Court.

(4) **Decree.** A proposed decree, setting forth a list of all disbursements and distributions of the assets of the estate and, in appropriate cases, providing for the discharge of the personal representative and the release of any surety, shall be attached to the face of the

petition.

(5) *Appraisal.* No appraisal of the decedent's personal property is required, unless ordered by the Court.

**Probate Section Comment:** If the identity or whereabouts of a distributee is unknown or if there are no known heirs, it is suggested that a report in the form provided by Rule 13.3.A. be attached to the petition.

## EXCEPTIONS

### **Rule 7.1.A. Exceptions. Rules Governing. [Rule \*77.1]**

- (1) All challenges to an order, decree, opinion, or adjudication of an account shall be raised by written exceptions. An order, decree, or opinion shall become final, and an adjudication of an account shall be confirmed absolutely as of course, after the expiration of twenty (20) days after the date of such order, decree, opinion, or adjudication, unless written exceptions thereto are filed within said twenty (20) days.
- (2) Notwithstanding the provisions of paragraph (1) hereof, the Court will not entertain exceptions to the decree of a Hearing Judge awarding a jury trial or to any other interlocutory order or decree.
- (3) Notwithstanding the provisions of provisions of paragraph (1) hereof, exceptions to the disposition of schedules of distribution by the Auditing Judge shall only be filed in accordance with Rule 6.11.A.(5)(c).
- (4) Exceptions shall be filed with the Clerk, served in accordance with Rule 3.5.A.(2), and listed for argument as provided in Rule 1.2.B.(3).
- (5) Exceptions shall be in writing, numbered consecutively, and signed by the exceptant or the exceptant's attorney. Each exception shall:
  - (a) be specific as to description and amount;
  - (b) in no event raise questions which could have been raised previously by claim or objection;
  - (c) raise but one issue of law or fact, but if there are several exceptions relating

to the same issue of law or fact, all such exceptions shall be included in one exception; and

(d) set forth briefly the reason or reasons in support of the exception.

***Probate Section Comment:*** Under this Rule, the filing of timely exceptions is necessary to preserve an issue for appellate review. See Estate of Volkhardt, 484 Pa. 52, 398 A.2d 656 (1979). This Rule does not, however, address the issue of whether an order, decree, or opinion is otherwise appealable or final under the appellate rules. See generally Hunter, Pennsylvania Orphans' Court Commonplace Book, Appeals § 6; Pa. R.App.P. § § 301-342.

**Rule 7.1.B. Exceptions. Effect Upon Distribution. [Rule \*77.2]**

When the matters which are the subject of an adjudication are so separate and distinct that an exception to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the adjudication shall not be suspended, except as to those matters to which exceptions have been taken; distribution may proceed as to the remainder; and any party from whom such distribution has been withheld may petition the Court to order distribution.

## AUDITORS AND MASTERS

### **Rule 8.1.A. Appointment. [Rule \*80]**

(1) *Auditor to Examine and Audit Account.* An auditor to examine and audit an account may be appointed by the Court when all parties in interest, or their counsel, consent thereto in writing.

(2) *Auditor to State Account.* An auditor to state an account may be appointed by the Court when a proper account cannot be obtained from a fiduciary. Such appointment may be made sua sponte or upon petition of any party in interest. The auditor may be required to file the account and to participate in such further proceedings as the Court may direct.

(3) *Master. Amicus Curiae.* A master or an amicus curiae with the powers of a master may be appointed by the Court, sua sponte or upon petition of any party in interest.

### **Rule 8.1.B. Manner and to Whom Given. [Rule \*81.1]**

(1) The Court appointed auditor, master, or amicus curiae shall give written notice of such appointment and of the time and place of such appointee's first hearing to all persons who have appeared of record, and to such other persons and in such manner as the Court may direct.

(2) Notice of succeeding hearings given by the auditor, master or amicus curiae at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

**Rule 8.2.A. Where Filed. [Rule \*82.1]**

(1) *Report of Auditor.* Reports of auditors shall be filed with the Clerk.

(2) *Reports of Master, Amicus Curiae.* Reports of a master or an amicus curiae, shall be filed with the Appointing Judge.

**Rule 8.7.A. Report of Auditor or Master. [Rule \*87.1]**

(1) *Auditor to Examine and Audit Account.*

(a) Time and Contents of Notice. At least thirty (30) days prior to filing the report, the auditor appointed to examine and audit an account shall give notice to all parties in interest or their counsel which shall state:

(i) the date upon which the report filed;

(ii) that a copy of the report is either enclosed or will promptly be sent upon request; and

(iii) that any person who objects to the report must file written objections thereto with the auditor prior to the intended filing date under the penalty that the Court may otherwise assume that there is no objection and may accept the report as submitted.

(b) Objection to Report. Prior to the date set by the auditor for filing the report, any party in interest may file with the auditor written objections to the report. In such event, the auditor shall supplement the report by a full consideration of the objections seriatim, setting forth concisely all reasons for recommending that the Court sustain or dismiss each objection. The auditor shall then file the report, together with a copy of the objections and the

supplemental report, giving the parties in interest or their counsel concurrent notice of such filing and a copy of the supplemental report.

(2) ***Auditor to State Account.*** Objections to the report of an auditor who states an account shall be asserted as objections to the auditor's account, as provided in Rule 6.10.A.

(3) ***Master Amicus Curiae.*** Paragraph (1) shall apply to a master and an amicus curiae with the powers of a master.

***Probate Section Comment:*** Objections to the report of an auditor appointed to examine and audit an account, a master or an amicus curiae should be presented in a form substantially similar to exceptions to an adjudication.

**Rule 8.8.A. Filing With Clerk. [Rule \*88.1]**

The Court may require that security be filed with the Clerk for the compensation and expenses of the auditor, master, or amicus curiae.

## OFFICIAL EXAMINERS

### **Rule 9.1.A. Charitable Trusts. Visitorial Powers. [Rule \*92]**

#### **(1) *Exercise: In General.***

In the exercise of its visitorial and supervisory powers over charitable trusts, in general, the Court will, in its discretion, from time to time, by general rule or special order, direct the official examiner, or a special examiner appointed for the purpose, to make an examination of the assets of a designated trust and an investigation to determine whether the purposes of the trust are being carried out in the manner provided by the trust instrument; and to submit to the Court a written report thereon which shall follow as nearly as may be the form prescribed by these Rules for a master's report and shall contain specific recommendation for the Court's consideration.

#### **(2) *Cemetery Trusts.***

In the exercise of its visitorial and supervisory powers over cemetery trusts, the Court will, from time to time, appoint a cemetery trust examiner, or examiners, who shall, periodically, inspect all cemetery lots and places of interment or sepulcher maintained under cemetery trusts subject to the jurisdiction of the Court; audit, informally, trustee's accounts pertaining thereto; examine the assets thereof; and submit written reports thereon to the Court in accordance with such rules and regulations as the Court will, from time to time, promulgate.

### **Rule 9.1.B. Termination of Trust. [Rule \*93]**

A trustee making distribution of the corpus of a trust upon its termination without formal accounting shall obtain from the distributees a receipt and waiver of accounting which shall be

delivered to the examiner and attached to the examiner's report thereof. Such receipt and waiver shall not constitute an approval by the Court of the administration of the trust, nor operate as a discharge by the Court of the trustee or the trustee's sureties. If an estate is distributed without an accounting, the fiduciary shall be personally liable for the compensation of the examiner, unless provision is made therefor at the time of distribution.

**Rule 9.1.C. Compensation. [Rule \*94]**

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

(2) *Charitable Trusts.*

(a) In General. Each estate shall be liable for the compensation of the examiner in such amount as the Court shall specifically fix in each case.

(b) Cemetery Trusts. The cemetery trust examiner, or examiners, appointed under Rule 9.1.A.(2), supra, shall be paid by the trustees in an amount fixed by the Court.

## REGISTER OF WILLS

### **Rule 10.2.A. Certification of Record. [Rule \*102]**

(1) *Contents of Petition.* A petition to fix a date for a hearing upon a certification of record to the Court from the Register shall be filed with the Clerk and thereafter promptly presented to the Administrative Judge or his or her designee and shall set forth:

- (a) the nature of the proceedings before the Register;
- (b) the basis for the certification of record; and
- (c) the names and addresses of all parties in interest, including those who have not been made parties to the record.

(2) *Certification by Register.* When the record has been certified by the Register, the petition required by paragraph (1) shall be presented by the party who instituted the contest, or, in special circumstances, as the Court may direct.

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

### **Rule 10.2.B. Certifications. Assignment to an Audit List. Notice. [Rule \*103]**

(1) Certifications allowed pursuant to Rule 10.2.A, after filing proof of service of the citation, shall be placed on the audit list and assigned by the Clerk to the Judges in rotation. In special circumstances, the Administrative Judge may assign a judge to hear the matter. Where

proof of service is filed before 3 p.m. on the fifth Wednesday preceeding an audit list, the matter shall be placed on that audit list.

(2) The Clerk shall forthwith send notice to counsel who filed the petition for citation of the date when the matter will appear on the audit list.

(3) The Clerk shall, at least fifteen (15) days prior to the call of such audit list, give notice in writing to all parties in interest of the following:

(a) that the matter has been placed upon an audit list, and the date, the time and the courtroom scheduled for the call of the audit;

(b) the nature of the interest of the person to whom such notice is given; and

(c) a brief description of the nature of the dispute.

(4) In those instances where the matter has been specially assigned by the Administrative Judge to a Hearing Judge, notice shall be given by such party, and at such time and in such form, as the Hearing Judge may direct.

**Rule 10.2.C. Appeal from Register. [Rule \*104]**

**(1) *Commencement of Appeal.***

(a) Appeals from the judicial acts or proceedings of the Register shall be initiated by filing a notice of appeal with the Clerk on the form supplied by the Clerk and with respect to an Inheritance Tax Appeal, a copy shall be filed with the Register.

(b) After the notice of appeal has been filed with the Clerk, the Register upon request shall forthwith transmit the record to the Clerk.

(2) ***Petition for Citation.***

Contemporaneously with the filing of the notice of appeal, the appellant shall file a petition for citation with the Clerk which shall set forth:

- (a) the nature of the proceedings before the Register;
- (b) the basis for the appeal together with copies of all wills involved in the controversy known to be in existence;
- (c) the names and addresses of all parties in interest, including those who have not yet been made parties to the record; and
- (d) the facts upon which jurisdiction is based.

(3) ***Issuance of Citation.***

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

(4) ***Service of Citation.***

In accordance with Rule 3.5.B., service of the citation, together with a copy of the petition for citation, shall be made on all parties in interest within thirty (30) days of the issuance of the citation by the Clerk and the original citation with proof of service endorsed or annexed thereon shall be filed with the Clerk.

(5) ***Placement on Audit List.***

The Clerk shall place the appeal upon the next available audit list sixty (60) days after the issuance of the citation.

**(6) *Notice of Audit List.***

The appellant, at least fifteen (15) days prior to the call of such audit list, shall give notice in writing to all other parties in interest of the following:

- (a) that the matter has been placed upon an audit list, and the date, the time, and the courtroom scheduled for the call of the audit;
- (b) the nature of the interest of the person to whom such notice is given; and
- (c) a brief description of the nature of the dispute.

**(7) *Special Notice.***

In those instances where the matter has been specifically assigned to a Hearing Judge, notice shall be given by such party, and at such time and in such form, as the Hearing Judge may direct.

**Rule 10.2.D. Grant of Jury Trial. [Rule \*106]**

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

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

(3) If a jury trial is granted, as provided in paragraph (1) or (2) hereof, the Hearing

Judge shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the Hearing Judge shall determine.

**Rule 10.2.E. Inheritance Tax Appeals. [Rule \*107]**

An appeal from an inheritance tax appraisal shall be filed in the office of the Register on the form provided by the Register. Thereafter, appellant shall file with this Court a petition in accordance with Rule 10.2.B. and proceed as provided in Rule 10.2.C.

## **JURY TRIALS**

### **Rule 11.2.A. Trial Judge. [Rule \*110]**

When a jury trial has been granted by a Hearing Judge as provided in Rule 10.2.D.(1), the Hearing Judge impaneling the jury shall proceed to the trial of the case; however, when a jury trial has been granted as provided in Rule 10.2.D.(2), the case will be assigned to the Judges in rotation, or, in special circumstances, the Administrative Judge may assign a judge to preside.

### **Rule 11.2.B. Motions After Trial. [Rule \*112.1]**

Motions after trial shall be placed by the Clerk on the argument list, as of course.

## SPECIAL PETITIONS

### **Rule 12.1.A. Family Exemption. Additional Requirements. [Rule \*121.1]**

(1) ***Contents of Petition.*** A petition for the family exemption shall also set forth in separate paragraphs:

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

(b) the name, address, and relationship of the petitioner to the decedent, and whether the petitioner was a member of the same household as the decedent at the date of his death;

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

(d) whether the decedent died testate or intestate; where, when, and to whom letters were granted; if decedent died intestate, the names, relationship, and addresses of those interested as next of kin;

(e) the location and valuation of the property claimed; and

(f) that twenty (20) days' prior notice of the filing of the petition has been given to the personal representative, or when no letters have been granted, to the parties adversely affected.

(2) ***Exhibits.*** The following exhibits shall be attached to the petition:

(a) a copy of the will;

(b) a copy of the inventory showing the valuation of the property claimed,

when the exemption is claimed from personal property, and the gross estate exceeds the amount of the family exemption provided by law; and

- (c) a verified return of notice.

**Rule 12.1.B. When Appraisal Unnecessary. [Rule \*121.2]**

Unless otherwise directed by the Court, no appraisal shall be required, if the exemption is claimed:

- (1) from personal property and the gross value of the decedent's estate does not exceed the amount of the family exemption provided by law; or
- (2) wholly or in part from real estate, if all parties in interest agree on the valuation.

**Rule 12.1.C. Allowance. [Rule \*121.3]**

**(1) *Prior to Audit.***

(a) Personal Property. If the petition requests the exemption prior to audit, the petitioner shall file the petition with the Clerk and thereafter shall give twenty (20) days' written notice of such intention to all persons adversely affected thereby who do not join in the prayer of the petition. In the absence of objection, on presentation of a verified return of notice, an appropriate decree may be entered.

(b) Real property. If the petition requests the exemption prior to the audit and the parties in interest do not agree upon the valuation, the practice and procedure shall be as provided by Rule 12.2.C.

(2) *At Audit.* The petition may be filed with the Clerk at any time prior to the audit in order that the demand may be a matter of record, and the filing thereof shall be brought to the attention of the Auditing Judge, or the request may be presented at the audit. The Auditing Judge may require that the property claimed be appraised or that notice be given in such manner as the Auditing Judge shall direct.

**Rule 12.1.D. Voluntary Distribution. [Rule \*121.4]**

When the personal representative without the Court's approval delivers assets of the estate in satisfaction of the family exemption the same shall be set forth as a disbursement in the account and may be the subject of objection by any claimant or party in interest.

**Rule 12.1.E. Procedure Under Section 3546 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §3546). [Rule \*74]**

(1) *Contents of Petition.* A petition under Section 3546 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 3546) for the determination of title shall set forth:

- (a) the name of the petitioner and petitioner's relationship to the decedent;
- (b) the facts on which the claim of the petitioner is based;
- (c) whether the decedent died testate or intestate, and where, when, and to whom letters were granted;
- (d) a description of real property located within the Commonwealth, and the place, book, and page of recording the last deed thereto;
- (e) the names and addresses of all known creditors and parties in interest; and
- (f) the facts material to a determination of the title.

(2) ***Exhibits.*** The following exhibits shall be attached to the petition:

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

(b) a copy of decedent's will.

**Rule 12.2.A. Allowance to Surviving Spouse of Intestate. Additional Requirements. [Rule \*122.1]**

(1) ***Contents of Petition.*** A petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:

(a) the information required in a petition for family exemption under Rule 12.1.A., as far as appropriate;

(b) the death of decedent, intestate, without issue or adopted children; the names, addresses, and the relationship of those interested as next of kin; and

(c) that ten (10) days' prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.

(2) ***Exhibits.*** The following exhibits shall be attached to the petition:

(a) if a ceremonial marriage occurred, a certified copy of the marriage certificate;

(b) if there were prior marriages by either spouse, a copy of the death certificate, if dissolved by death; or a certified copy of the decree of divorce by which such

marriages were dissolved;

(c) a copy of the inventory and appraisal; and

(d) a verified return of notice.

**Rule 12.2.B. Conclusiveness of Averments. [Rule \*122.2]**

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

**Rule 12.2.C. Appraisal. Notice. Confirmation. [Rule \*122.3]**

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

(2) *Notice of Appraisal.* Upon the filing of the appraisal, notice thereof shall be given to the personal representative, and to the next of kin; and, if there be neither personal representative, nor next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that confirmation of the appraisal and the setting apart of the real estate to the surviving spouse will be requested and may be allowed by the Court, of which not less than ten (10) days' notice is given therein, unless objections are filed. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.

(3) *Confirmation and Setting Apart of Allowance.* In the absence of objection, at the expiration of ten (10) days after giving of notice under paragraph (2), and after the last

appearance of the advertisement, if any, upon submission of proof of notice, the Court may enter a decree.

**Committee Comment:** The Rule recognizes the present practice of making the award of real estate in satisfaction of the spouse's allowance a part of the distribution decree when a Court accounting is filed. While this Rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of Section 3546 of the Probate, Estates and Fiduciaries Code, it, nevertheless, is considered advisable to preserve it in its altered form as a guide when it is to be employed.

**Rule 12.3.A. Petition to Enforce the Rights of an Electing Spouse under Chapter 22 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. 2201 et. seq.). [Rule \*123.1]**

(1) ***Contents of Petition.*** The petition by an electing spouse shall set forth the following:

- (a) the name, date of death and residence of the decedent;
- (b) the name and address of the petitioner, and the petitioner's residence on the date of the decedent's death;
- (c) an averment that the petitioner is the surviving spouse of the decedent; the date and place of the ceremonial marriage, and the name of the official capacity of the person who performed the ceremony; or, in case of a common-law marriage, all averments necessary to establish the validity of such a marriage;
- (d) whether the decedent died testate or intestate; if letters were granted, where, to whom and when they were granted;
- (e) the approximate value of all assets which may be subject to the spouse's election, to the extent known by petitioner;
- (f) the date of the filing of the election, and the date and method of notice to

the decedent's personal representative of the filing;

(g) a description of the party or parties against whom relief is sought, including whether each party is a fiduciary, custodian or obligor, and whether each is the original beneficial recipient or a successive donee to the property or its proceeds;

(h) a description of the relief sought, describing the specific acts to be performed or the extent of the personal liability to be imposed;

(i) any other information relevant to the disposition of the petition; and

(j) a prayer for a citation to show cause why the relief sought should not be granted, or if no citation is required, a prayer for the relief requested.

(2) ***Exhibits.*** The following shall be attached to the petition:

(a) a copy of the decedent's will, deed of trust or other instrument of conveyance (if any) pertaining to the property with respect to which relief is requested; and

(b) consents to the relief requested signed by those parties in interest who have consented thereto and who have not jointed in the petition.

(3) ***Service of Citation and Notice.***

(a) Petitions Requiring the Issuance of a Citation.

(i) In accordance with Rule 3.5.B., service of the citation shall be made on all parties to whom the citation is directed, and the original citation with proof of service endorsed or annexed thereon shall be filed with the Clerk.

(ii) Petitioner shall give written notice to all other parties in interest who have neither joined in the petition nor consented to the requested relief by letter and

copy of citation mailed to all such parties at least twenty (20) days prior to the return date of the citation.

(iii) Counsel to petitioner shall file with the Clerk, prior to the return date of the citation, a certification of mailing which shall list the names and addresses of all parties to whom notice was so given, including a copy of the notice given.

(b) Notice in the Case of Petitions Not Requiring the Issuance of a Citation.

In accordance with Rule 1.2.A., petitioner shall give written notice of the intended presentation of the petition to the Court and shall attach to the petition a certification in the form required by Rule 1.2.A.(2)(b).

(4) *Decree.* There shall be attached to the face of the petition:

(a) In the case of petition requiring the issuance of a citation, a preliminary decree in approved form awarding a citation as requested in the petition; and

(b) A final decree in approved form providing for the relief requested. In appropriate cases, the decree will fix the amount of security, if any, to be entered.

**Comment:** Under Section 764 of the Probate, Estates and Fiduciaries Code Section (20 Pa. C.S. §764), jurisdiction of the person is obtained by citation awarded by the Orphans' Court Division. Accordingly, petitioner should request the award of a citation directed to each person over whom personal jurisdiction is required in order to obtain the relief requested.

**Rule 12.3.B. Petition to Restrain the Payment or Transfer of Property under Section 2211(d) of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §2211(d)).**  
[Rule \*123.2]

(1) *Contents of Petition.* The petition by a surviving spouse shall set forth the following:

(a) the same information which is required under paragraphs (1)(a) through (d)

under Rule 12.3.A.;

(b) if an election has been filed, the date of the filing, and the date and method of notice to the decedent's personal representative of the filing;

(c) an averment that the property whose transfer or payment the petitioner seeks to restrain is property which may be subject to election as set forth in Section 2203 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §2203) and a detailed description of the property to the extent known by the petitioner, which shall include the following:

(i) the nature of the property and its approximate fair market value;

(ii) the names of all persons holding title to the property at the time of the decedent's death and at the time of presenting the petition;

(iii) the identification of any fiduciary having an interest in the property;

and

(iv) the nature of the decedent's interest in the property and the date of any transfers of any interest held by the decedent in the property;

(d) an averment that failure to restrain the transfer or payment of the aforesaid property may result in irreparable injury to the petitioner;

(e) any other information relevant to the disposition of the petition; and

(f) a prayer for a citation, directed to all persons whom the petitioner alleges may transfer or make payments of the property described in paragraph (1)(c) hereof, to show cause why they should not be restrained from making payments or transfers of the aforesaid property.

(2) ***Exhibits.*** The following shall be attached to the petition:

(a) a copy of the decedent's Will, deed of trust or other instrument of conveyance (if any) pertaining to the property with respect to which relief is requested; and

(b) consents to the relief requested signed by those parties in interest who have consented thereto and who have not joined in the petition.

(3) ***Service of Citation and Notice.***

(a) Service of the citation shall be made on all parties to whom the citation is directed, and the original citation with proof of service endorsed or annexed thereon shall be presented at the hearing.

(b) Petitioner shall give written notice to all other parties in interest who have neither joined in the petition nor consented to the requested relief, by letter and copy of citation mailed to all such parties at least twenty (20) days prior to the hearing. At the hearing counsel to petitioner shall present a certification of mailing which shall list the names and addresses of all parties to whom notice was so given, including a copy of the notice given.

(4) ***Decree.*** There shall be attached to the face of the Petition:

(a) A preliminary decree in approved form awarding a citation as requested in the petition and fixing a date for a hearing; and

(b) A final decree in approved form providing for the relief requested. In appropriate cases, the decree will fix the amount of security, if any, to be entered.

**Rule 12.3.C. Petition to Extend the Time for a Surviving Spouse to Elect to Receive an Elective Share in Accordance with Section 2210(b) of the Probate, Estates and Fiduciaries Code ( 20 Pa. C.S. §2210(b) ). [Rule \*123.3]**

(1) ***Contents of Petition.*** A petition by a surviving spouse shall set forth the following:

(a) The same information which is required under paragraphs (1)(a) through (d) under Rule 12.3.A.;

(b) The fact relied upon to justify an extension of time in which to file an election;

(c) any other information relevant to the disposition of the petition; and

(d) a prayer for the extension requested.

(2) ***Exhibits.*** The following shall be attached to the petition:

(a) a copy of the decedent's will, deed of trust or other instrument of conveyance (if any) pertaining to the property which may be subject to the spouse's elective rights; and

(b) consents to the extension requested signed by those parties in interest who do not join in the petition, and the names of those parties who do not consent and a copy of the notice which has been given to them.

(3) ***Notice.*** Any party in interest who does not join in the petition or consent to the extension shall receive written notice of the intended presentation of the petition to the Court.

(4) ***Decree.*** A proposed decree in approved form shall be attached to the face of the petition.

**Rule 12.4.A. Appointment. Additional Requirements. [Rule \*124.1]**

(1) ***In General.*** A guardian ad litem and/or a trustee ad litem will be appointed when the discharge of a trustee or of the trustee's estate is sought, a distribution of corpus is to be made, in any other matter in which the Court considers that the interest of a minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person is not adequately represented by other living persons sui juris who have similar or non-adverse interests or in any other circumstance that the Court deems desirable. If the fiduciary is willing to accept an adjudication without prejudice to the rights of minors and unascertained interests, the Court may waive such appointment.

(2) ***Procedure.*** Counsel for the accountant or any party in interest, at least two weeks prior to the date upon which the case is listed for audit or hearing, shall present to the Auditing or Hearing Judge either a petition for appointment of a guardian ad litem and/or trustee ad litem or a written request for the waiver of the appointment of a guardian ad litem and/or trustee ad litem.

(a) A petition for any such appointment shall set forth the information required by Sup. Ct. O.C. Rule 12.4(c).

(b) A request for waiver of any such appointment shall set forth:

(i) the name, address, and, if applicable, date of birth of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and the relationship to the decedent or settlor;

(ii) the interest of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and the provisions of any instrument creating such interest;

(iii) the name, address and interest of each sui juris party in interest who has a similar interest to the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and whose interest is not adverse to such person;

(iv) a statement why the accountant or other party in interest believes that such party in interest is qualified to represent the interest of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person; and

(v) a statement that notice of the audit or hearing has been given to such party in interest so identified as representative of the minor, incapacitated person, absentee, presumed decedent or unascertained person.

(3) ***Appointment.*** A guardian ad litem and/or a trustee ad litem shall be appointed only by the Auditing Judge or Hearing Judge assigned to preside at the audit or hearing at which the guardian ad litem and/or trustee ad litem shall appear and act on behalf of such persons as he or she has been appointed to represent.

(4) ***Time of Filing of Report.*** The guardian ad litem and/or trustee ad litem shall file the report within 60 days after appointment by the Court unless the time for filing is otherwise shortened or extended by (a) the Court or (b) agreement of the parties.

(5) ***Contents of Report.*** The report of the guardian ad litem and/or trustee ad litem shall contain the following:

(a) a statement of when, how and why the guardian ad litem and/or trustee ad litem was appointed;

(b) the identity and interests of persons on whose behalf the guardian ad litem and/or trustee ad litem has been appointed;

- (c) a review of the account, if applicable;
- (d) a statement of the legal and other issues involved and the position of the guardian ad litem and/or trustee ad litem with respect thereto; and
- (e) such other information as the guardian ad litem and/or trustee ad litem deems relevant.

The report may also contain a request by the guardian ad litem and/or trustee ad litem for compensation.

**(6) *Discharge.*** The guardian ad litem and/or trustee ad litem shall be deemed discharged upon the date that the adjudication or judgment becomes final or upon final approval of the schedule of distribution, if one is required, unless reappointed by the Court on its motion with compensation as directed by the Court.

**Probate Section Comment:** In most instances it is inappropriate for an ad litem to file exceptions.

**Rule 12.4.B. Compensation. [Rule \*124.2]**

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

**Rule 12.5.A. Minor's Estate. Appointing Judge. [Rule \*125.1]**

The Judge who appoints a guardian or who awards a fund to a minor or to the minor's parent as natural guardian will be designated "Appointing Judge." Generally, all matters pertaining to the administration of the minor's estate will be referred to the Appointing Judge.

**Rule 12.5.B. Minor's Estate. Exhibits. [Rule \*125.2]**

The following exhibits shall be attached to the petition:

(1) *Consent of Parents or Person in Loco Parentis.* Written consent of the parents or surviving parent of the minor to the appointment of a guardian for his or her estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or of the superintendent or other official in charge of the institution having custody of the minor, and in all cases of a married minor, of such minor's spouse. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the petition as the Court may direct.

(2) *Consent of Individual Guardian.* When the proposed guardian is an individual, his or her written consent to act as such shall contain, in addition, the following statements:

- (a) his or her business, and domicile;
- (b) that he or she is a citizen of the United States, able to speak, read and write the English language; and
- (c) if the minor and proposed guardian reside in the same household, that it is not the intention of the guardian to apply for an allowance for the support or education of the minor during minority.

(3) ***Funds Arising from Litigation.*** If any part of the minor's estate was obtained as the result of litigation or compromise of litigation in a Court of record, a copy of the decree approving the compromise and distribution of the proceeds of the suit shall be attached to the petition.

**Rule 12.5.C. Minor's Estate. Restricted Account. [Rule \*125.3]**

(1) ***Waiver of Security.*** In lieu of the entry of security, the Court, in the decree appointing the guardian, may authorize the guardian:

(a) to deposit the funds of the minor in an interest-bearing deposit; or

(b) to invest in a building and loan association of which the principal office is located in Philadelphia in an amount not to exceed that which is authorized under the laws of the Commonwealth of Pennsylvania; subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without order of Court, with a further requirement that the evidence of the deposit or investment, marked to indicate the restriction, shall be promptly exhibited to the Court.

(2) ***Limitation.*** A deposit or investment of principal under this Rule shall not exceed the amount which is fully insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

(3) ***Payment at Majority of Minor.***

(a) When the gross estate does not exceed \$12,000.00, the decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains majority; upon the

joint order of the guardian and the late minor without further order of the Court.

(b) If the deposits or investments of principal under this Rule exceed \$12,000.00 or if, upon subsequent order of the Court, withdrawals have been made from the account during minority, the guardian shall file a petition for the guardian's discharge upon the minor's attaining majority. There shall be attached to the petition:

(i) a statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated;

(ii) an affidavit by the guardian setting forth that the guardian has received no additional assets belonging to the minor; and that all claims of which the guardian has notice have been paid; and

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

(5) A depository in which a guardian of the estate of a minor or an incapacitated person has deposited the funds of said estate in a restricted savings account or certificate pursuant to Court order is authorized to release sufficient funds therefrom to pay income taxes levied by the state or federal government upon said estate upon the signature of the guardian without Court approval.

**Rule 12.5.D. Minor's Estate. When Guardian Unnecessary. [Rule \*125.4]**

(1) ***Disposition. In General.*** If the value of the real and personal estate of a minor does not exceed the statutory limitation, the Court may:

(a) authorize payment or delivery thereof to the minor, or the parent or other person maintaining the minor;

(b) direct the deposit of the money in a restricted account, in the name of a natural guardian of the minor, or of the minor himself; or

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

(2) ***Mortgage or Sale of Real Property.*** If the entire estate of a minor does not exceed the statutory limitation, the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the Rules governing the sale or mortgage of real property by a guardian. The order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

**Rule 12.5.E. Minor's Estate. Allowances. [Rule \*125.5]**

**(1) *In General.***

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

(b) Petitions. Permissive. Mandatory.

(i) Permissive. The guardian may petition the Court for approval of periodical payments from income needed from the maintenance, support or education of the minor, the minor's spouse or children.

(ii) Mandatory. No payments shall be made by the guardian, unless approval by the Court is first obtained, when payment is to be made from principal, except as provided in paragraph (1)(a) of this Rule, or, when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

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

(a) the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;

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

(c) the value of the minor's estate, real and personal, and the net annual income;

(d) the circumstances of the minor, whether employed or attending school; if the minor's mother or father, or other person charged with the duty of supporting the minor, is living, the financial condition and income of such person and why such 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, or the minor's spouse and children;

(e) the date and amount of any previous allowance by the Court, and the name of the Judge who granted it;

(f) the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; and

(g) if the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any, given by the guardian for the guardian's failure to do so.

**(3) Contents of Petition. Allowance of Counsel Fee.** A petition for the allowance of counsel fee shall set forth the views of the guardian with respect to the reasonableness of the fee and contain sufficient facts to enable the Court to pass judgment on the matter. The following exhibits shall be attached to the petition:

(a) a statement of counsel setting forth in detail the nature and extent of the services performed;

(b) the joinder of the minor's parents or surviving parent; or, if both parents are deceased; the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor, and in all cases of a married minor, of his or her spouse; and

(c) the joinder of the minor, if over eighteen (18) years of age.

**Rule 12.6.A. Appointment of a Trustee. Exhibits. [Rule \*126.1]**

The following exhibits shall be attached to the petition for the appointment of a trustee:

- (1) a copy of the trust instrument;
- (2) the written consent of the proposed trustee to act as such; and
- (3) the written consent of any co-trustee.

**Rule 12.7.A. Discharge of a Fiduciary. Additional Provisions. [Rule \*127.1]**

(1) *Affidavit.* The affidavit to the petition shall include an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent. In the latter instance, the Court may, if the circumstances require, direct the issuance of notices by citation or otherwise.

(2) *Exhibits. Consents.* Written consent of the surety, of all parties in interest, and of the surviving or successor fiduciary shall be attached to the petition. Such consent may be included in a satisfaction of award attached to the petition.

**Rule 12.7.B. Discharge of a Personal Representative. Section 3184 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §3184). [Rule \*127.2]**

When the gross real and personal estate of a decedent does not exceed the statutory limitation, the personal representative, after the expiration of one year from the first complete advertisement of grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3184 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §3184). The petition shall conform as far as practicable to the requirements of a petition under Rule 6.11.B.

**Rule 12.7.C. Fiduciaries in Military Service. Appointment of Substituted Fiduciary Pro Tem. Section 4301 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §4301). [Rule \*127.3]**

(1) ***Contents of Petition.*** A petition under Section 4301 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §4301) shall set forth:

(a) the facts necessary to confer jurisdiction upon the Court;

(b) the estimated value of the estate;

(c) the names of all parties in interest, the nature and extent of their interest, stating who are minors or incapacitated persons, with the names and the record of the appointment of their guardians, committees, or trustees;

(d) that notice of the presentation of the petition has been given to all parties in interest who are sui juris;

(e) the name and address of the person proposed as a substitute fiduciary pro tem, if such an appointment is requested; the nature and relationship of such person to the estate or to the parties; and

(f) such other facts as may be necessary to enable the Court to pass judgment on the matter.

(2) ***Exhibits.*** A copy of the will or deed creating the trust, the consent of the co-trustees and a verified return of notice shall be attached to the petition.

**Rule 12.8.A. Partition. Additional Provisions. [Rule \*128.1]**

(1) ***Account. Auditor.*** The fiduciary selling real property in a partition proceeding shall file an account after the sale is completed. The Court may dispose of the matter at the audit

of the fiduciary's account or may appoint an auditor to ascertain whether there are any liens or other encumbrances on such real property affecting the interest of the parties.

(2) ***Distribution Policy.*** If distribution of the proceeds of sale in partition or owelty is made by the Court, a distribution policy, issued by a title insurance company, drawn in the name of the Commonwealth to the use of all persons interested in the fund, shall be submitted to the Court. The premium charge for this policy shall be educated from the fund as costs.

**Rule 12.9.A. Petitions for Leave to Sell Real Property at Public Sale under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate, Estates and Fiduciaries Code.**  
**[Rule \*129.1]**

(1) ***Contents of Petition.***

(a) A petition by a personal representative shall set forth the following information:

(i) the name, residence and date of death of the decedent; whether he died testate or intestate; and the date letters were granted to the petitioner;

(ii) that the petitioner is not otherwise authorized by statute to sell; or is not authorized to do so by the will; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(iii) the total value of the property set forth in the inventory and the date it was filed;

(iv) the value at which the real property to be sold was included in the inventory;

(v) if bond was entered, the name of the surety and the amount of such

bond;

(vi) the names and relationships of all parties in interest; whether or not they are sui juris, and, if not, the names of their fiduciaries (if any) and a statement of how they were appointed; and whether or not they join in the petition or consent to the sale;

(vii) the street address or other adequate description of the property to be sold, a brief description of the building erected upon the property, the current occupant of the property and the current tax assessment;

(viii) a list of all liens of record known to the petitioner; and

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

(b) A petition by a trustee shall set forth the following information:

(i) how title was acquired, stating the date and place of probate of the will or recording of the deed to the trustee;

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

(iii) that the petitioner is not otherwise authorized to sell by statute; or is not authorized by the deed of trust; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(iv) the total approximate current value of property held in trust; and

(v) the same information as is required under subparagraphs (a)(v) through (ix) in a petition by a personal representative.

(c) A petition by a guardian of a minor's estate shall set forth the following

information:

- (i) the circumstances of the petitioner's appointment;
  - (ii) the name, age and residence of the minor; the names of the minor's parents and whether either of them is deceased;
  - (iii) how title was acquired;
  - (iv) if an inventory was filed, the total value of the property set forth therein and the date it was filed, and the value at which the real property to be sold was included therein;
  - (v) the total approximate current value of property held by the petitioner;
  - (vi) a recital of the provisions of the will or deed of trust relating to the real property to be sold;
  - (vii) that the petitioner is not authorized to sell the real property; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;
  - (viii) the nature and extent of the interest of the minor, of the petitioner and of third persons in the real property;
  - (ix) sufficient information to enable the Court to find that the proposed sale is in the best interest of the minor; and
  - (x) the same information as is required under subparagraphs (a)(v) through (ix) in a petition by a personal representative.
- (d) A petition by a guardian of an incapacitated person's estate shall set forth the following information:

- (i) the date of the petitioner's appointment and the name of the Hearing Judge;
- (ii) the domicile of the incapacitated person and the institution, if any, at which the incapacitated person is maintained;
- (iii) how title was acquired;
- (iv) the total value of the property set forth in the inventory and the date it was filed;
- (v) the value at which the real property to be sold was included in the inventory;
- (vi) the total approximate current value of property held by the petitioner;
- (vii) a statement of all claims of the incapacitated person's creditors known to the petitioner;
- (viii) sufficient information to enable the Court to find that the proposed sale is in the best interest of the incapacitated person;
- (ix) if the property to be sold is the incapacitated person's former residence, an averment that he is not likely to return to live in it; and
- (x) the same information as is required under subparagraphs (a)(v) through (ix) in a petition by a personal representative.

(2) **Exhibits.** The following exhibits shall be attached to the petition:

- (a) a copy of the will, deed of trust or decree (or other instrument) by which the petitioner was appointed; and

(b) consents to the sale signed by those parties in interest who do not join in the petition, and the names of those parties who do not consent and a copy of the notice which has been given to them.

(3) **Notice.** Any party in interest who does not join in the petition or consent to the sale shall receive written notice of the intended presentation of the petition to the Court.

(4) **Decree.** A proposed decree providing that the real property be offered for public sale and that a return of sale be filed with the Court shall be attached to the face of the petition.

(5) **Public Sale. Notice. Return of Sale. Confirmation.**

(a) Notice. After the allowance of a petition for public sale, notice in approved form shall be given in the manner provided by Rule 5.1.B.

(b) Return of Sale. The petitioner shall file with the Court a return of public sale in the form provided by Rule 5.4.A.(2).

(c) Confirmation. A proposed decree confirming the sale and, where appropriate, fixing the amount of security to be entered by the petitioner shall be attached to the face of the return sale.

**Rule 12.10.A. Petitions for Leave to Sell or Exchange Real Property at Private Sale under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate Estates and Fiduciaries Code. [Rule \*130.1]**

(1) **Contents of Petition.** A petition under this Rule shall set forth, as nearly as may be practicable, the same information as is required under Rule 12.9.A. with regard to a petition to sell real property at public sale and, in addition, it shall set forth the following information:

(a) the name and address of the purchaser and a brief recital of the terms of

sale; and

(b) the estimated net proceeds which the petitioner will receive at the time of settlement.

(2) **Exhibits.** The following exhibits shall be attached to the petition:

(a) a copy of the will, deed of trust or decree (or other instrument) by which the petitioner was appointed;

(b) consents to the sale signed by those parties in interest who do not join in the petition, and the names of those parties who do not consent and a copy of the notice given to them;

(c) a copy of the agreement of sale;

(d) a schedule setting forth the computation of the estimated net proceeds which the petitioner will receive at the time of settlement, including an itemized list of estimated closing expenses; and

(e) the affidavits of two real estate appraisers or brokers not of the same office, setting forth the information required under Sup. Ct. O.C. Rule 12.10(b).

(3) **Notice.** Any party in interest who does not join in the petition or consent to the sale shall receive written notice of the intended presentation of the petition to the Court.

(4) **Decree.** A proposed decree approving the sale and, where appropriate, fixing the amount of security to be entered by the petitioner shall be attached to the face of the petition.

**Rule 12.10.B. Petitions to Fix or Waive Additional Security under Sections 3351 and 7141 of the Probate, Estate and Fiduciaries Code. [Rule \*130.2]**

***(1) Contents of Petition.***

(a) In a sale, whether public or private, of real property without benefit of an order of Court directing or authorizing such sale, where a personal representative or trustee was required to give a bond, a petition by a personal representative or trustee shall set forth the following information:

- (i) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; and the date letters were granted to the petitioner;
- (ii) the total value of all assets set forth in the inventory;
- (iii) the value at which the real property to be sold was included in the inventory;
- (iv) if bond was entered, the name of the surety and the amount of such bond;
- (v) the street address or other adequate description of the property to be sold; a brief description of the building erected on the property; the current occupant of the property; and the current tax assessment;
- (vi) the name and address of the purchaser and a brief recital of the terms of the sale;
- (vii) the estimated net proceeds which petitioner will receive at the time of settlement;
- (viii) a list of all liens of record known to petitioner;
- (ix) the names and relationships of all parties in interest; whether or not

they are sui juris, and, if not, the names of their fiduciaries and a statement of how they were appointed; and whether or not they join in the petition or consent to the sale; and

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

(b) A petition by a trustee shall set forth the following information:

(i) how title was acquired;

(ii) a recital of the relevant provisions of the will or deed of trust pertaining to the real property to be sold;

(iii) the estimated value of all assets currently held in trust; and

(iv) the same information required under paragraph (a) (iv) through (x) in a petition by a personal representative.

(2) **Notice.** Any party in interest who does not join in the petition or consent to the sale shall receive written notice of the terms of sale and of the intended presentation of the petition to the Court.

(3) **Exhibits.** Attached to the petition shall be the following:

(a) a copy of the will or deed of trust;

(b) a copy of the agreement of sale;

(c) a schedule setting forth the computation of the estimated net proceeds which petitioner will receive at the time of settlement, including an itemized list of estimated closing expenses; and

(d) consents to the sale signed by those parties in interest who do not join in the petition, and the names and addresses of those parties who do not consent and a copy

of the notice which has been given to them.

(4) **Appraisals.** No appraisal shall be required where counsel for petitioner certifies that:

- (a) in counsel's opinion the estate is solvent; and
- (b) counsel knows of no objection to the sale by a party in interest.

In the absence of such certification, an appraisal by a qualified appraiser shall be presented with the petition. The Court may order the appointment of an appraiser in any case where it deems it appropriate or necessary for the disposition of the petition.

(5) **Decree.** A proposed decree shall be attached to the face of the petition. In the decree the Court shall fix the amount of security which the petitioner shall be required to enter, or excuse the petitioner from entering additional security. The corporate surety shall be the same as on the original bond, unless the Court directs otherwise.

**Probate Section Comments:**

1. Petition by a Personal Representative or a Trustee: When a personal representative is required to petition the Court to have additional security fixed or waived under Rule 12.10.B., the sale must meet with Court approval; otherwise personal representatives and trustees have statutory authority to sell real property without Court approval unless a specific devisee of the real property refused to join in the sale, the personal representative or trustee wishes to bid on the property, or the governing instrument denies the power to sell. See Probate, Estates and Fiduciaries Code Sections 3351, 3353, 3356 and 7141.

2. Petition by a Guardian of a Minor's Estate: A guardian of a minor's estate may be appointed by order of Court, by will in accordance with Section 2519(b) of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §2519(b)), or by instrument of conveyance in accordance with Section 5115 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §5115). A Court appointed guardian does not have the power to sell real property without Court approval. See Section 5155 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §5155). A will or instrument of conveyance appointing a guardian may give the guardian power to sell without Court approval. See Section 5146(a) of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §5146(a)).

3. Petition by a Guardian of an Incapacitated Person's Estate: A guardian of an incapacitated person's estate does not have the power to sell real estate without Court approval.
4. With respect to petitions to sell real property under the Inalienable Property Act (Section 8301 et. seq. of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.), see Rules 12.12.A. to 12.12.H.
5. The procedure and the information required for a petition for the private sale of real property to pay debts of a decedent shall conform, as nearly as practicable, to the procedure and information required of a petition presented under Rule 12.10.A.

**Rule 12.11.A. Petition for Leave to Mortgage or Lease Real Property under Sections 3353, 5155, 5521(23) and 7133(16) of the Probate, Estates and Fiduciaries Code.**  
**[Rule \*131.1]**

(1) *Contents of Petition.* A petition by a fiduciary under this Rule shall set forth, as nearly as may be practicable, the same information as is required under Rule 12.9.A. with regard to a petition to sell real property at public sale by the same fiduciary; and, in addition, it shall set forth the name of the proposed mortgagee or lessee, the amount and terms of the proposed mortgage loan or lease and 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:

(a) a copy of the will, deed of trust, or decree (or other instrument) by which the petitioner 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 of those parties who do not consent and a copy of the notice given to them; and

(c) a statement by the proposed mortgagee agreeing to grant the mortgage loan.

(3) *Notice.* Any party in interest who does not join in the petition or consent to the mortgage or lease shall receive written notice of the intended presentation of the petition to the Court.

(4) *Decree.* A decree in approved form shall be attached to the face of the petition approving the mortgage or lease and, where appropriate, fixing the amount of security to be entered by the petitioner.

**Rule 12.12.A. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.). Public Sale. Contents of Petition. Additional Requirements. [Rule \*132.1]**

(1) *Trustee.* A petition to sell real property at public sale, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et seq.) 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 full description of the real property, its improvements, by whom it is occupied, its rental value, the current tax assessment, and the liens and charges to which it is subject;

(c) the interest of the petitioner, if a fiduciary, how and when such fiduciary was appointed; if other than a fiduciary, the name of the fiduciary, if any, and how and when such fiduciary was appointed;

(d) a recital of the history of the trust, and of the relevant provisions of the

will or deed pertaining to the real property to be sold; the names of all parties and the nature and extent of their interests, stating which, if any, are minors or incapacitated persons, and giving the names and record of appointment of their guardians, if any; and the names of the next of kin and the age of any minors;

(e) the limitations or defeasibility from which title is to be freed, following as closely as possible the language of Section 8301 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301); and that the purpose of the proceeding is to obtain a decree stating that the title transferred to the purchaser shall be indefeasible by any person ascertained or unascertained, or by any class of persons mentioned in the petition or decree having a present or expectant interest in the premises, and unprejudiced by any error in the proceedings of the Court;

(f) sufficient facts to enable the Court to determine whether the proposed sale will be to the interest and advantage of the parties, and whether the said sale may be made without prejudice to any trust, charity, or purpose for which the real property is held, and without the violation of any law which may confer an immunity or exemption from sale or alienation; and

(g) the names of any parties who do not voluntarily appear.

(2) ***Guardian.*** A petition by a guardian to sell real property at public sale, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.), shall also set forth in separate paragraphs:

(a) that the petitioner was appointed guardian of the estate of the minor, stating the method, date and record of appointment; or, if the estate of the minor consists

of an interest in real property of a value not exceeding the statutory limitation provided in Sections 5101 and 5102 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §§5101 and 5102), that the petitioner is the natural guardian, or the person by whom the minor is maintained, stating the relationship of the petitioner to the minor;

(b) the interest of the minor and a full description of the real property proposed to be sold; its improvements; by whom it is occupied; its rental value; the current tax assessment; and the liens and charges to which it is subject;

(c) whether title was acquired by will, descent or deed, the date of decedent's death, the date and place of probate of the will or recording of the deed with respect to the real property proposed to be sold; and if the interest of the minor is partial, the names of the other parties, the nature of their interest, that they desire the sale to be made, and are willing to join in the deed;

(d) the age of the minor; the names of his or her next of kin; and the notice given them of the presentation of this petition; and

(e) sufficient facts to enable the Court to determine that it would be in the interest of such minor that the real property be sold.

**Rule 12.12.B. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.). Public Sale. Exhibits. [Rule \*132.2]**

The following exhibits shall be attached to a petition by a fiduciary to sell real property at public sale, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.):

(1) a copy of the will, deed, or decree by which the fiduciary was appointed; and

(2) consents to the sale signed by those parties in interest who consent thereto, and the notice which has been given to those parties who do not consent, or voluntarily appear as petitioners or respondents; if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted, directed to all parties who have not appeared, as provided by Section 8304 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8304).

**Rule 12.12.C. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.). Public Sale. Notice. Confirmation. Security. [Rule \*132.3]**

The practice and procedure with respect to notice, confirmation, and the entry of security shall conform to the appropriate provisions of Rule 5.1.B. governing notice.

**Rule 12.12.D. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.). Private Sale. Contents of Petition. Additional Requirements. [Rule \*132.4]**

(1) *Trustee.* A petition by a trustee to sell real property at private sale, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.), shall also set forth in separate paragraphs:

- (a) the information required under Rule 12.12.A(1);
- (b) the name and address of the proposed purchaser, the price to be paid; the terms of the proposed sale; and that the price offered is better than can be obtained at a public sale; and
- (c) when the proposed sale is of an undivided interest, that the other parties in interest desire the sale to be made and are willing to join in the deed.

(2) *Guardian.* A petition by a guardian to sell real property at private sale, under

Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.), shall also set forth in separate paragraphs:

- (a) the information required under Rule 12.12.A.(2); and
- (b) the name and address of the proposed purchaser, the price to be paid, the terms of the proposed sale, and that the price offered is better than can be obtained at a public sale.

**Rule 12.12.E. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. §8301 et. seq.). Private Sale. Exhibits. [Rule \*132.5]**

The following exhibits shall be attached to a petition by a fiduciary to sell real property at private sale, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.):

- (1) a copy of the will, deed, or decree by which the fiduciary was appointed;
- (2) a copy of the agreement of sale;
- (3) affidavits by two real estate appraisers setting forth the information required by Rule 12.10.A.(2); and
- (4) consents to the sale signed by those parties in interest who consent thereto and the notice which has been given to those parties who do not consent, or voluntarily appear as petitioners or respondents; if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted, directed to all parties who have not appeared, as provided by Section 8304 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8304).

**Rule 12.12.F. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 8301 et. seq.). Private Sale. Security. [Rule \*132.6]**

The Court, in the decree approving or confirming the sale, will fix the amount of security which the fiduciary shall be required to enter.

**Rule 12.12.G. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et. seq.). Mortgage. [Rule \*132.7]**

(1) *Contents of Petition.* A petition by a fiduciary to mortgage real property, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.), 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 loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed loan should be approved.

(2) *Exhibits. Security.* The exhibits required by Rule 12.11.A.(2) shall be attached to the petition, with the proviso regarding consents, that if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted, directed to all parties who have not appeared, as provided by Section 8304 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8304). Security shall be fixed as provided by Rule 12.11.A.(4).

**Rule 12.12.H. Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 8301 et. seq.). Real Estate or Fiduciaries in Other Counties. [Rule \*132.8]**

(1) Fiduciaries whose appointments originated in this county shall obtain leave of this Court to petition the Court of another county of this Commonwealth, under Chapter 83 of the

Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.), to sell or mortgage real property located in that county. Such leave may be obtained by petition to this Court setting forth briefly the substantial averments of a petition for the sale or mortgage of real property.

(2) Fiduciaries whose appointments originated in other counties of this Commonwealth shall obtain leave of the Court of their appointment to petition this Court under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. §8301 et seq.) to sell or mortgage real property located in this county. The petition to this Court shall comply with the provisions of these Rules with regard to the sale or mortgage of real property, and shall include, as exhibits, copies of the petition and of the decree of the court of origin.

**Rule 12.16.A. Petition for Review. [Rule \*135]**

Every petition for review of an adjudication or decree shall contain a certification that the Auditing Judge or the Judge who entered the decree to be reviewed has been previously informed of the intention to file the petition for review.

## DISTRIBUTION - SPECIAL SITUATIONS

### **Rule 13.3.A. Content of Report. [Rule \*69.5]**

The report required by Sup. Ct. O.C. Rule 13.3 shall be submitted at the audit, and shall include, substantially, the following:

(1) ***Unknown Distributee.*** If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report at the audit, verified by affidavit of the fiduciary or counsel for the fiduciary, in which shall be set forth:

(a) the nature of the investigation made to locate the heirs of the decedent, in complete detail; and

(b) in cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain.

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

(2) ***Non-Resident Distributee.*** If the fiduciary requests the Court to withhold distribution to a non-resident distributee, he shall submit a written report at the audit, verified by the affidavit of the fiduciary or counsel for the fiduciary, in which shall be set forth:

(a) the relationship of the distributee to the decedent, and any available information concerning the distributee's present whereabouts;

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

(c) the reasons for the request that distribution be withheld, and the suggested manner of withholding.

## INCAPACITATED PERSONS' ESTATES

### **Rule 14.2.A. Petitions Under Chapter 55 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5501 et seq.)**

(1) *Contents.* Any petition filed under Chapter 55 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5501 et seq.) shall be in plain language and shall include the following (in addition to those paragraphs unique to the relief requested by the petition):

- (a) The name, residence and post office address of the petitioner and the relationship, if any, of the petitioner to the alleged incapacitated person;
- (b) The name, date of birth, social security number, residence, post office address and occupation, if any, of the alleged incapacitated person;
- (c) The names, ages and addresses of the spouse, dependents, parents and presumptive adult heirs of the alleged incapacitated person;
- (d) The names and addresses of the persons or institutions providing residential services to the alleged incapacitated person;
- (e) The names and addresses of all other service providers;
- (f) The names and addresses of the persons or entities whom petitioner asks to be appointed guardian and an averment that all proposed guardians have no interest adverse to the alleged incapacitated person;
- (g) The reasons the guardianship is requested;
- (h) A description of the functional limitations and of the physical and mental condition of the alleged incapacitated person;
- (i) The steps taken to find less restrictive alternatives;

(j) The specific areas of incapacity over which the guardian is requested to be assigned authority;

(k) The qualifications of each proposed guardian and the written consent of each proposed guardian to serve;

(l) Where a guardian of the estate is sought, the gross value of the estate and net income from all sources to the extent known (including but not limited to salary, income or other benefits which the alleged incapacitated person is receiving or entitled to receive);

(m) A copy of the most recent annual report(s), if any has been filed, certified as true and correct by counsel and the date of filing of said report(s);

(n) A statement as to whether the alleged incapacitated person was a member of the United States Armed Forces and whether he or she is currently receiving veterans' benefits;

(o) A statement as to whether the alleged incapacitated person has executed a power of attorney or an advance directive for health care; and

(p) A statement as to whether any other court has ever assumed jurisdiction in any proceeding to determine the capacity of the alleged incapacitated person.

(2) **Decrees.** The following decrees shall be attached to the face of a petition for adjudication of incapacity:

(a) A preliminary decree awarding a citation directed to the alleged incapacitated person to show cause why he or she should not be adjudged an incapacitated person and a limited or plenary guardian appointed, and providing for a hearing at a time

and place to be supplied by the Court. The preliminary decree shall also restate the requirements set forth in Rule 14.2.B.(4), (5) and (6).

(b) A final decree adjudicating incapacity, appointing a limited or plenary guardian of the person and/or estate, directing the filing of an annual report and fixing security, if any.

(3) ***Presentation of Petitions.*** All petitions under Chapter 55 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5501 et seq.) shall be filed with the Clerk of the Court in the county in which the alleged incapacitated person resides, or is domiciled, or in which previous matters under this Chapter have been filed by the proposed guardian, the Court appointed guardian or any interested party.

(4) ***Alleged Incapacitated Persons: Resident/Non-resident.***

(a) The Court may determine the incapacity of persons domiciled or residing in the Commonwealth, and appoint guardians of the person and/or estate of the incapacitated person.

(b) The Court may determine the incapacity of persons not domiciled in the Commonwealth, having property in the Commonwealth, and appoint a guardian of the estate of the incapacitated person. The Court shall give preference in its appointment to the foreign guardian of the non-resident incapacitated person, unless such appointment would not be in the best interests of the incapacitated person.

**Probate Section Comment:** Section 5512.1 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5512.1) elaborates the basis upon which the Court shall make a finding of incapacity. The description and the steps taken to find less restrictive alternatives must include sufficient information to satisfy the requirements of §5518 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5518). Section 5511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5511) establishes that the Court may adjudicate an individual

incapacitated and appoint a guardian only upon petition and hearing and upon the presentation of clear and convincing evidence.

**Rule 14.2.B. Practice and Procedure. In General.**

(1) ***Assignment of Petitions.*** Petitions for the appointment of guardians of alleged incapacitated persons will be assigned to the Judges of the Court in rotation.

(2) ***Consent of Proposed Guardian.*** The written consent of the proposed guardian to act as guardian, containing the information required to be given by a guardian of the estate of a minor, under Rule 12.5.B.(2), shall be attached to the petition.

(3) ***Hearing Judge.*** The Judge to whom a petition is assigned will be designated “Hearing Judge.” Generally, all matters pertaining to the administration of the incapacitated person’s estate will be referred to the Hearing Judge.

(4) ***Service on Alleged Incapacitated Person and Notice to Interested Parties.***

(a) Personal service on the alleged incapacitated person shall be made by petitioner, or petitioner’s representative, no less than twenty (20) days before the hearing. At the time of service, the petition and citation shall be explained to the maximum extent possible in language the alleged incapacitated person will be most likely to understand and the petition and the citation shall be left with him or her. The form of notice provided to the alleged incapacitated person shall be in large type and simple language, indicate the purpose and seriousness of the proceedings and the rights that could be lost as a result of the proceedings. Such notice shall include:

- (i) The date, time and place of hearing;
- (ii) An explanation of all rights of the alleged incapacitated person

(including the right to counsel, to have an independent evaluation, to have the cost of counsel and of such independent evaluation reimbursed by the Commonwealth if the alleged incapacitated person is unable to pay); and

(iii) A statement that if the alleged incapacitated person does not attend the hearing or does not reply to the petition, the Court may assume that there is no objection to the petition and grant the requested relief.

(b) At least twenty (20) days before the hearing, notice consisting of copies of the petition and citation shall be sent by petitioner by certified mail to all persons who are sui juris and entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time. If there are no known intestate heirs, notice shall be given to the Attorney General at the Eastern Regional Office in Philadelphia. Notice shall also be provided to such person or institution providing residential services to the alleged incapacitated person and to such other parties as the Court may direct, including other service providers.

(c) The petitioner must notify the Court at least seven (7) days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person.

**(5) *Proof of Service and of Notice.***

(a) The following shall be submitted at a hearing for determination of incapacity:

(i) An affidavit of service of the petition and citation on the alleged incapacitated person, attached to or endorsed upon the original citation, reciting

that the petition and citation were explained to the maximum extent possible in language likely to be understood by the alleged incapacitated person and that a copy of each was left with him or her; and

(ii) An affidavit reciting the manner of giving notice of the hearing and identifying those persons to whom such notice was given as required in Rule 14.2.B.(4).

(b) **For all other petitions**, proof of service and of notice shall be in accordance with Rule 1.2.A. or as the Court shall otherwise direct.

(6) ***Attendance at Hearing.*** The petitioner and the alleged incapacitated person shall be present at the hearing unless:

(a) The Court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that the physical or mental condition of the alleged incapacitated person would be harmed by his or her presence; or

(b) It is impossible for the alleged incapacitated person to be present because of his or her absence from the Commonwealth, in which case it shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem.

The Court may, in its discretion, hold a closed hearing or a hearing without a jury, subject to the right of the alleged incapacitated person or his or her counsel to demand an open hearing, or a hearing with a jury. The hearing may be held at such location as the Court shall direct, including the alleged incapacitated person's residence.

(7) ***Emergency Proceedings.***

(a) Appointment: The Court, upon petition and hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person and the estate of an alleged incapacitated person, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment would result in irreparable harm to the person or estate of the alleged incapacitated person. The Court may also appoint an emergency guardian of the person pursuant to Chapter 55 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5501 et seq., including §5513) for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside the Commonwealth, regardless of whether he or she has property in this Commonwealth.

(b) Applicability of Other Provisions: The provisions of §5511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5511), including those relating to counsel, shall be applicable to such proceedings, except when the Court has found such provisions to be impractical.

(c) Duration of Emergency Guardianship:

(i) Person: An emergency order appointing an emergency guardian of the person may be in effect for up to seventy-two (72) hours. If the emergency continues, then, upon application to the Hearing Judge, the emergency order may be extended for no more than twenty (20) days from the expiration of the initial emergency order. After the expiration of the emergency order or any extension, a full guardianship proceeding must be instituted

pursuant to §5511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5511).

(ii) Estate: An emergency order appointing an emergency guardian of the estate shall not exceed thirty (30) days. After thirty (30) days, a full guardianship proceeding must be initiated pursuant to §5511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5511).

(d) Electronic Filing: By leave of Court, a copy of the petition and preliminary decree may be transmitted electronically to the Hearing Judge, e.g., by facsimile transmission, with the originals to be delivered to the Court on the next business day.

**(8) *Evidence of Incapacity.***

(a) Testimony: The petitioner must present testimony, whether in person or by deposition, from individuals qualified by training and experience in evaluating incapacities of the type alleged by petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills.

(b) Independent Evaluation: If, pursuant to §5511(d) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5511(d)), the Hearing Judge upon his or her own motion or on petition by the alleged incapacitated person for cause shown, shall order an independent evaluation to meet the requirements of §5518 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5518): (1) the evaluator shall file a report of findings with the Hearing Judge before the hearing and shall

send a copy thereof to each counsel of record and to such other interested parties or persons as the Court may direct; (2) the Hearing Judge shall determine the charges for the independent evaluation and the persons responsible for the payment and shall give due consideration to any evaluator nominated by the alleged incapacitated person.

**(9) Filing of An Inventory.** Within three months of the adjudication of incapacity, every guardian of the estate of an incapacitated person shall file an inventory with the Clerk of the Court in accordance with the provisions of §5521(b) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5521(b)) upon forms supplied by the Clerk of the Court.

**(10) Filing of Annual Reports.** Within twelve (12) months of a guardian's appointment, and annually thereafter, the guardian of an incapacitated person shall file a report in accordance with §5521(c)(1) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5521(c)(1)) with the Clerk of the Court.

**(11) Testamentary Writings.** A copy of all testamentary writings of the incapacitated person found by the guardian, or in the possession of any other person, certified to be true and correct, shall be submitted by the guardian or such other person to the Hearing Judge for inspection within thirty (30) days of such guardian's appointment, or when such testamentary writing(s) is subsequently discovered.

**(12) Certificates of Appointment.** The Clerk, in addition to issuing certified copies of the decree appointing a guardian, will issue a "Guardian's Certificate" in accordance with the decree when the security, if any, ordered by the Court has been entered.

**Probate Section Comment:** See Rule 3.5.B. for the citation procedure and required manner of service. Notwithstanding paragraph (4), a shorter time period for service may be permitted in connection with petitions for the appointment of an emergency guardian. If the alleged incapacitated person is in a hospital, nursing home or other institution, service must be made by

an attorney or authorized personnel of the institution (in accordance with Rule 5.2.A.) and notice of the hearing should be given to the director or other authorized official of such facility. If the alleged incapacitated person is a veteran, notice of the hearing must be given to the Veterans' Administration. Although paragraph (8)(a) permits testimony by deposition, such evidence may not necessarily be considered adequate to establish incapacity. In relying on such evidence, counsel takes the risk that the petition will be denied or that the hearing will be continued so that a witness may be produced to give "live" testimony.

**Note:** Pursuant to the Pennsylvania Mental Health Procedures Act, §109, the Court is required within seven days of finding an individual incapacitated to file a "Notification of Mental Health Commitment" form with the Pennsylvania State Police.

**Rule 14.2.C. Practice and Procedure. Small Estates.**

If at a hearing the incapacity is established, and it appears that the gross estate does not exceed the statutory limitation, the Court may award the entire estate to the person or institution maintaining the incapacitated person, or make such order as may be appropriate under the circumstances. In such case, a decree in approved form, in lieu of the final decree appointing a guardian, shall be attached to the face of the petition.

**Probate Section Comment:** Sections 5101 and 5505 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. §5101 and §5505) prescribe the statutory limitation for small estates.

**Rule 14.2.D. Practice and Procedure. Special Petitions.**

**(1) *Allowances.***

(a) In General: Expenditures for the maintenance or support of an incapacitated person or for a dependent of the incapacitated person, or for payment of counsel fees, shall be governed by the appropriate provisions of Rule 12.5.E.(1) and (3); but, otherwise, as hereinafter provided.

(b) Presentation of Petition and Decrees: A petition for distribution from the incapacitated person's estate, during incapacity, shall be filed with the Clerk of the Court by the guardian or any interested party. A final decree shall be attached to the face of the petition. When the petitioner is not a guardian, a preliminary decree containing a provision for the time and place for hearing to be fixed by the Court shall also be attached to the face of the petition. Notice shall be given to the guardian and to such other parties as the Court may direct.

(c) Additional Contents of Petition: In addition to the provisions set forth in Rule 14.2.A.(1), the petition shall also set forth:

(i) The name of the guardian, the date of his or her appointment, the nature of the guardianship of the estate or person (limited or plenary) and the name of the Hearing Judge;

(ii) If the petitioner is not a guardian, his or her relationship to the incapacitated person, and, if not related, the nature of his or her interest;

(iii) A statement of all previous distributions allowed by the Court since the date of the last Court approved accounting, if any;

(iv) An itemized statement of all claims of the incapacitated person's creditors known to petitioner;

(v) A statement of the requested distribution and the reasons therefor; and

(vi) A prayer for the distribution requested.

If the allowance requested will involve a matter which will require annual petitions for

substantially similar relief, the petitioner may request the Court to make the grant of the allowance applicable to more than one (1) year, but not to exceed three (3) years, unless otherwise permitted by the Court.

(d) **Restrictions Governing Allowance:**

(i) Except in cases of extreme emergency, requests for allowances will not be approved prior to the filing of the inventory or the last required annual report, as the case may be.

(ii) If any portion of the incapacitated person's estate is received from the United States Veterans' Administration or its successor, or any agency of the Commonwealth, notice of the request for allowance shall be given to such agency.

(2) ***Sales.***

(a) **Real Property:** A petition to sell real property shall comply with the appropriate provisions of the rules governing sale under Rule 12.12.A, as far as practicable.

(b) **Personal Property:** The Court shall be asked to approve sales of personal property only when the circumstances are unusual or where the nature of the property is such that the incapacitated person may wish to receive it in kind if he or she regains his or her capacity.

(3) ***Reserve for Funeral.*** In accordance with §5537 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5537), the Court may authorize a funeral reserve.

(4) ***Estate plan.*** In accordance with §5536(b) of the Pennsylvania Probate, Estates

and Fiduciaries Code (20 Pa. C. S. §5536 (b)), the Court may substitute its judgment for that of the incapacitated person with respect to the incapacitated person's estate planning and other affairs.

(5) ***Other Petitions.*** The provisions of Rule 14.2.D. do not preclude the filing of other petitions for special relief. All other petitions shall be filed with the Clerk of the Court by the guardian or any interested party.

**Probate Section Comment:** Section 5521 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. §5521) gives the guardian authority to sell personal property without court approval. Therefore, for instance, such approval should not be sought for the routine sale of publicly traded securities; however, court approval may be sought for sales of other types of personal property, such as the alleged incapacitated person's personal effects, household furnishings or closely held stocks.

**Rule 14.2.E. Practice and Procedure. Modification of Existing Orders and Adjudication of Capacity.**

(1) ***Petition to Modify An Existing Order.*** A petition to modify an existing order shall include a request for the appropriate modification of the existing order in accordance with the evidence as presented of the incapacitated person's capacity or other change in circumstance.

(2) ***Petition for Adjudication of Capacity.*** A petition for adjudication of capacity shall include a request that the incapacitated person be declared no longer incapacitated, that the guardian be directed to file a final account and that such other action as the circumstances may require be approved.

## ADOPTIONS

**Probate Section Comment:** In Philadelphia County, exclusive jurisdiction in adoption matters is vested in the Family Court Division of the Court of Common Pleas.

**SHORT TITLE**

**Rule 17.1.A. Philadelphia Orphans' Court Division Rules. [Rule \*161(b)]**

The Local Rules of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County shall be known as the Philadelphia Orphans' Court Division Rules, and shall be cited as Phila. O.C. Div. Rules.