

**RULES OF THE COURT OF COMMON PLEAS**

**ORPHANS' COURT DIVISION**

Integrated with Pennsylvania Supreme Court  
Orphans' Court Rules

**Supreme Court Rules in bold type**

Local Rules in regular type

**RULE 1. JUDGES – LOCAL RULES**

**Rule 1.1. Powers of Judges**

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

Rule 1.1-1. [RESERVED]

Note: No local rule required. See PEF Code §701, and 42 Pa. C.S. §§323, 324, 325, 326 and 1722 (a)(1).

Adopted May 15, 1990, effective July 1, 1990.

**Rule 1.2. Local Rules**

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

**LOCAL RULES OF COURT**

Rule 1.2-1. (a) The Orphans' Court Rules of the Ninth Judicial District, in conjunction with the

Supreme Court Orphans' Court Rules, the Cumberland County Rules of Procedure and any Act of Assembly regulating the practice and procedure in the Orphans' Court, shall regulate the practice and procedure in the Orphans' Court Division of this Court.

(b) These Rules shall be known as Cumberland County Orphans' Court Rules and shall be cited as C.C.O.C.R.

Note: This Rule integrates the C.C.O.C.R. with Pa.O.C. Rules. For the applicability of the Cumberland County Rules of Procedure (C.C.R.P.), see C.C.R.P. 3.

Adopted May 15, 1990, effective July 1, 1990.

### COURT OFFICE AND RECORDS

Rule 1.2-2. (a) The posting of notices required by any rule of court shall be in accordance with C.C.R.P. 500.

(b) The correction or omission of any entry of a book, docket, will book or other official record in the Offices of the Register or Clerk shall be in accordance with C.C.R.P. 501.

(c) The docketing of cases shall be in accordance with C.C.R.P. 550.

Adopted May 15, 1990, effective July 1, 1990.

### COURT CALENDAR

Rule 1.2-3. The Court Calendar, including the dates for confirmation of accounts, shall be determined in accordance with C.C.R.P. 551.

Adopted May 15, 1990, effective July 1, 1990.

### SURETIES

Rule 1.2-4. The acceptance and justification of sureties shall be in accordance with C.C.R.P. 358, 359 and 361.

Adopted May 15, 1990, effective July 1, 1990.

## **RULE 2. CONSTRUCTION AND APPLICATION OF RULES**

### **Rule 2.1. Construction of Rules**

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

#### CONSTRUCTION OF LOCAL RULES

Rule 2.1-1. All current practices, precedents and forms, not inconsistent with these Rules or Pa.O.C. Rules, shall continue in full force and effect until such time as rescinded or revised by order of the Court.

Adopted May 15, 1990, effective July 1, 1990.

#### FOOTNOTES

Rule 2.1-2. The footnotes in these Rules are for information and shall not be considered as part of these Rules.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 2.2. Waiver of Time Limitation**

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

Rule 2.2-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 2.3. Definitions**

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

**“Clerk” means the Clerk of the Orphans’ Court Division.**

**“Court”, “Orphans’ Court” or “Orphans’ Court Division” means the Orphans’ Court Division of the Court of Common Pleas, or any judge thereof, having jurisdiction.**

**“Fiduciary” includes executors, administrators, guardians, and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans’ Court Division.**

**“Register of Wills” or “Register” means the Register of Wills having jurisdiction.**

#### DEFINITIONS

Rule 2.3-1. The following words when used in these Rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this Rule:

“Exception” means a disagreement with any order, decree, adjudication, confirmation or other decision of the Court-which would become a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342 following disposition of the Exceptions.

“Objection” means a disagreement with any matter relating to the family exemption, surviving spouse’s allowance, or with any act or omission of a Fiduciary, auditor, master or official examiner, or as otherwise defined or permitted by these Rules.

“PEF Code” means the “Probate, Estates and Fiduciaries Code,” 20 Pa. C.S. §§101, *et seq.*

Note: The Court may disregard any misnomer of an Exception or Objection, and no such misnomer shall be grounds for dismissal. See Pa.O.C. Rule 2.1 and Pa.R.C.P. 126.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## **RULE 3. PLEADING AND PRACTICE**

### **Rule 3.1. CONFORMITY TO EQUITY PRACTICE IN GENERAL**

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

#### **DECREES**

Rule 3.1-1. All decrees entered in the Orphans' Court Division shall be final, unless Exceptions shall be filed as permitted or prescribed by Pa.O.C. Rule 7.1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 3.2. Petition, Answer and Reply**

#### **PETITION AND ANSWER**

Rule 3.2-1. The pleading and practice on petition and answer shall be in accordance with C.C.R.P.

Note: See PEF Code §761, and C.C.R.P. 206-1 to 209-2, inclusive.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 3.3. Averment of Incapacity**

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

Rule 3.3-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 3.4. Form of Petition. Exhibits. Consents**

**(a) A petition shall set forth**

**(1) the caption;**

**(2) a heading indicating briefly the purpose of the petition;**

**(3) a concise statement of the facts relied upon to justify the relief desired, together with the citation of any Act of Assembly relied upon; and**

**(4) a prayer for the relief desired.**

**(b) The petitioner shall attach to the petition**

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

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

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

Rule 3.4-1. [RESERVED]

Note: No local rule required. For requirement that form of decree shall be affixed to the front of the petition, see C.C.R.P. 206-3

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

**Rule 3.5. Mode of Proceeding on Petition**

**Proceeding on petition shall be by citation to be awarded by the Court upon application of petitioner in any case where jurisdiction over the person of the respondent is required and has**

**not previously been obtained. In all other cases, proceedings on petition shall be by notice. In either event a copy of the petition shall be served with the citation or notice unless service thereof is made by publication. Neither a citation nor notice shall be required where all parties in interest are the petitioners or their consents or joinders are attached.**

#### DISPOSITION

Rule 3.5-1. The Court may hear the testimony or appoint a master to hear the testimony and to report his findings of fact, conclusions of law and recommendations to the Court.

Note: See PEF Code §764, and C.C.R.P. 206-4 and 208-2.

Adopted May 15, 1990, effective July 1, 1990.

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

**The local Orphans' Court, by general rule or special order, may prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony. To the extent not provided for by such general rule or special order, the practice relating to such matters shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.**

Rule 3.6-1. [RESERVED]

Note: No local rule required. See PEF Code §774 and §775, and C.C.R.P. 209-1 and 209-2.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### **RULE 4. COMPUTATION OF TIME**

##### **Rule 4.1. Generally**

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

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

Rule 4.1-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 4.2. Publication for Successive Weeks**

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

Rule 4.2-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 4.3. Computation of Months**

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

Rule 4.3-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

## **RULE 5. NOTICE**

### **Rule 5.1. Method**

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

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

Rule 5.1-1. [RESERVED]

Note: No local rule required. See PEF Code §765 and §768. For the legal periodical, see, C.C.R.P. 335. See also C.C.R.P. 1009-1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 5.2. Method; Person Under Incapacity**

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

#### **METHOD; WHEN NO FIDUCIARY**

Rule 5.2-1. Whenever notice is to be given a person who is not sui juris and for whom there is no guardian or trustee, notice shall be given by service upon such person, if fourteen years of age or older, and in all cases upon the following persons, if applicable:

- (a) his next of kin;
- (b) his spouse;
- (c) the person with whom he resides or by whom he is maintained;
- (d) the superintendent or other official of the institution having custody of him; or
- (e) in such manner as the Court by special order shall direct.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 5.3. Time for Notice**

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

Rule 5.3-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 5.4. Return of Notice**

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

Rule 5.4-1. [RESERVED]

Note: No local rule required. See PEF Code §766.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 5.5. Charities; Notice to the Attorney General**

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

**pending. The notice shall include or be accompanied by such of the following as may be appropriate**

- (a) the caption of the case;**
- (b) a description of the nature of the proceeding;**
- (c) the date, time and place when the matter is to be heard by the court to the extent then known;**
- (d) the name of the decedent, settler, incompetent or minor, if not disclosed by the caption;**
- (e) a copy of the will or other instrument creating the charitable interest;**
- (f) the name and address of any specific charity which may be affected by the proceeding;**
- (g) if the charitable interest is a present interest, a description and the approximate market value of that interest;**
- (h) if the charitable interest is a future interest and the estimated present value of the property involved exceeds \$25,000, a brief description thereof including the conditions precedent to its vesting in enjoyment and possession, the names and ages of persons known to have interests preceding such charitable interest, and the approximate market value of the property involved;**
- (i) a description of any unresolved claim and any material question of interpretation or adjudication which may affect the value of the charitable interest;**
- (j) the names and addresses of all fiduciaries**
- (k) the name and address of counsel for the fiduciary; and**
- (l) the name and address of counsel for any charity who has received notice or has appeared for it and the name of the charity which he represents.**

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

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

Rule 5.5-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 5.6. Notice to Beneficiaries and Intestate Heirs**

*Text of rule applying to decedents dying on or after July 1, 1992 and before Jan. 1, 1999.*

[Pub. Note: The April 30, 1992 Supreme Court Order adopting Rule 5.6 states: "Rule 5.6 shall apply to decedents dying on or after July 1, 1992."]

**(a) Requirement of Notice. Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or his counsel shall send a written notice in substantially the form prescribed to**

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

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

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

**(4) the attorney general on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;**

**(5) the attorney general on behalf of any governmental beneficiary or in default of the other heirs of the estate;**

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

(7) the spouse, children or other intestate heirs of the decedent as determined under Chapter 21 of the Probate Estates and Fiduciaries Code.

(b) **Contents of Notice.** The notice shall contain the following information:

- (1) the date and place of decedent's death;
- (2) whether decedent died testate or intestate;
- (3) the county in which original letters were granted;
- (4) the names, addresses and telephone numbers of all appointed personal representatives and their counsel; and
- (5) a copy of the will or a description of the beneficiary's interest in the estate.

(c) **Manner of Notice.** Notice shall be given by personal service or by first-class, prepaid mail to each party whose address is known or reasonably available to the personal representative.

(d) **Certification of Notice.** Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the personal representative or his counsel shall file with the Register or Clerk his, her or its certification in substantially the attached form that notice has been given as required by this Rule. No fee shall be charged by the Register or Clerk for filing the certification required by paragraph (d).

(e) **Failure to File Certification.** Upon the failure by the personal representative or his counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent fiduciary and his counsel, notify the Court of such delinquency along with a request that the Court conduct a hearing to determine whether sanctions should be imposed upon the delinquent personal representative or his counsel.

(f) **Effect of Notice.** This Rule shall not alter, diminish or confer additional substantive rights upon any beneficiary.

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

## **(PRESCRIBED FORMS)<sup>1</sup>**

<sup>1</sup> Prescribed forms are omitted. For text of the prescribed forms, see Pa.O.C. Rule 5.6 in the Pennsylvania Rules of Court Desk Copy.

Rule 5.6-1. [RESERVED; *applying to decedents dying on or after July 1, 1992 and before Jan. 1, 1999.*]

Note: No local rule required. With respect to subdivision (a) (7) of Pa.O.C. Rule 5.6, it is suggested that “other intestate heirs” be determined as of decedent’s date of death as if decedent died intestate. Accordingly, only such intestate heirs would be entitled to notice. See Holtz Estate, 13 Cumb. L.J. 124 (1963). In the event any intestate heirs are unknown, it is suggested that the manner of giving notice shall be as the Court directs. See Pa.O.C. Rule 5.1(d).

Adopted February 1, 1993, effective March 30, 1993. (\* **Originally included as part of local rules, but currently omitted**)

### **Rule 5.6. Notice to Beneficiaries and Intestate Heirs**

*Text of rule applying to decedents dying on or after Jan. 1, 1999.*

Rule 5.6-1. [RESERVED; *applying to decedents dying on or after Jan. 1, 1999.*]

Note: No local rule required.

Adopted December 29, 2004, effective December 29, 2004.

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

Rule 5.7-1. [RESERVED]

Note: No local rule required.

Adopted December 29, 2004, effective December 29, 2004.

## **RULE 6. ACCOUNTS AND DISTRIBUTION**

### **Rule 6.1. Form**

**Accounts shall conform to the following rules:**

**(a) The dates of all receipts and disbursements, the sources of the receipts, and the persons to whom disbursements are made and the**

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

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

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

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

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

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

**(g) The uniform Fiduciary Accounting Principle and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts are approved as an elaboration of the requirements of this rule. Reference may be made to them for determination of the adequacy of a particular account. The model Account formats attached thereto are the approved forms for purposes of paragraph (f) (ii) of this Rule in lieu of all forms heretofore approved.<sup>1</sup>**

<sup>1</sup>For text of the National Fiduciary Accounting Standards Project, see Appendix following the Orphans' Court Rules in the Pennsylvania Rules of Court Desk Copy.

## FORM

### Rule 6.1-1.

**(a) Accounts (to include statements of proposed distribution, if any) shall be typed or printed on paper 8 ½" wide by 11" long, fastened together at the top and numbered consecutively at the bottom.**

(b) All accounts shall begin with a caption which shall set forth the nature of the account, the name and capacity of the Fiduciary and the name of the estate, trust, minor or incompetent, as applicable.

(c) The first account of a personal representative shall contain, immediately following the caption, the date the date of death of the decedent and the dates when letters in the estate were advertised in each of the publications for that purpose.

(d) Principal of personal estate and principal of converted real estate shall be stated separately.

(e) Income from personal estate and income from real estate shall be stated separately.

(f) Every account filed with the Clerk shall be signed by each accountant, unless special leave of court is obtained, and shall be verified by at least one accountant.

(g) Accounts (to include statements of proposed distribution, if any) shall be filed in duplicate.

Adopted May 15, 1990, effective July 1, 1990; subparagraph (f) amended February 1, 1993, effective March 30, 1993. (\*  
**Originally included as part of local rules, but currently omitted**)

#### **Rule 6.2. Form. Separate Accounts for Minors**

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

Rule 6.2-1. [RESERVED]

Note: No local rule required. See C.C.O.C.R. 6.11-1.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 6.3. Notice to Parties in Interest**

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

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

#### NOTICE – CERTIFICATION

Rule 6.3-1. No account presented shall be confirmed, nor any decree of distribution made, unless the accountant or attorney shall certify that written notice of the time of presentation of the account and proposed statement of distribution and the character thereof has been given for at least twenty days prior to the date fixed for confirmation in accordance with and as required by Section 3503 of the PEF Code.

Note: See PEF Code §3503, as amended effective Dec. 16, 1992.

Adopted May 15, 1990, effective July 1, 1990; amended February 1, 1993, effective March 30, 1993 (**\* Originally included as part of local rules, but currently omitted**); amended December 29, 2004, effective December 29, 2004.

#### **Rule 6.4. Time for Filing**

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

#### DEADLINE FOR FILING ACCOUNTS

Rule 6.4-1. Accounts of personal representatives to be confirmed shall be filed not later than 4:30 p.m. (prevailing time) of the fifth Friday preceding the date fixed for confirmation of said accounts.

Note: See C.C.O.C.R. 1.2-3.

Adopted May 15, 1990, effective July 1, 1990; amended February 1, 1993, effective March 30, 1993 (**\* Originally included as part of local rules, but currently omitted**); amended December 29, 2004, effective December 29, 2004.

#### **Rule 6.5. Filing With The Register of Wills [REPEALED]**

REPEALED

Adopted May 15, 1990, effective July 1, 1990.; repealed February 1, 1993, effective March 30, 1993. (\* **Originally included as part of local rules, but currently omitted**)

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

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

ADVERTISING

Rule 6.6-1. The Clerk shall advertise all accounts and accompanying statements of proposed distributions, if any, in the Cumberland Law Journal and in one newspaper of general circulation published within the county at least once a week during the two weeks immediately preceding the time for presentment of the accounts to the Court. Said advertisements shall set forth the name and the capacity of the respective accountants and shall set forth the time and place that said accounts shall be submitted to the Court for confirmation.

Note: See PEF Code §745, as amended.

Adopted May 15, 1990, effective July 1, 1990; amended February 1, 1993, effective March 30, 1993. (\* **Originally included as part of local rules, but currently omitted**)

**Rule 6.7. Filing Copy with the Department of Revenue**

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

Rule 6.7-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

## **Rule 6.8. Filing Copy with the United States Veterans' Administration**

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

Rule 6.8-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

## **Rule 6.9. Statement of Proposed Distribution**

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

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

### **FILING – TIME AND PLACE**

Rule 6.9-1. The statement of proposed distribution shall be filed at the same time, in the same quantity, and in the same office with the account which it accompanies.

Note: See C.C.O.C.R. 6.1-1 and Pa.O.C. Rule 6.6.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

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Rule 6.9-2. A statement of proposed distribution shall contain the names of the persons to whom it is proposed to award the balance for distribution, the amount of the share to be awarded to each and a brief statement of the nature and reasons for the proposed awards, including reference to the applicable provisions of the instrument or statute authorizing the proposed distributions.

Adopted May 15, 1990, effective July 1, 1990.

## STATEMENT OF PROPOSED DISTRIBUTION

Rule 6.9-3. The advertisement of an account shall indicate whether a statement of proposed distribution is included.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 6.10. Objections to Accounts and Statements of Proposed Distribution**

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

#### FILING AND SERVICE

Rule 6.10-1. Objections to an account or to the statement of proposed distribution, or both, must be filed in writing by not later than 9:00 a.m. (prevailing time) of the date fixed for confirmation unless otherwise permitted by the Court prior to confirmation. A copy of the Objections shall be served on the accountant or the accountant's attorney.

Adopted May 15, 1990, effective July 1, 1990.

#### DISPOSITION OF OBJECTIONS

Rule 6.10-2.

(a) If Objections are filed to an account or the statement of proposed distribution, or both, upon the motion or petition of the accountant or any party in interest, an auditor shall be appointed to pass upon the Objections, unless the question raised by the Objection is entirely a question of law, in which case the matter may be placed on the next argument list for decision by the Court; the Court may, in any case, appoint an auditor in its discretion. If the Objection raises questions of fact, an auditor may be appointed unless all parties interested join in an agreed statement or stipulation of facts.

(b) A Fiduciary's account for a minor shall not be confirmed during minority unless a guardian ad litem has been appointed for the minor. Said guardian shall have notice of the filing of the account at least twenty days prior to the date for confirmation.

Note: See PEF Code § 751.

Adopted May 15, 1990, effective July 1, 1990.

## **Rule 6.11. Confirmation of Accounts. Awards**

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

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

### CONFIRMATION

Rule 6.11-1. If no Objections are filed to either the account or the statement of proposed distribution, the Court may, on the day fixed for the presentation thereof, make a final decree confirming the account absolutely and directing distribution in accordance with the statement of proposed distribution.

Adopted May 15, 1990, effective July 1, 1990.

### SMALL ESTATES

Rule 6.11-2. Petitions under Section 3102 of the PEF Code for distribution of small estates shall set forth:

- (a) the name and address of the petitioner and petitioner's relationship to the decedent;
- (b) the name, date of death and domicile of decedent;
- (c) whether the decedent died testate or intestate, the date of the probate of the will, if applicable, and the date of grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount of the bond;
- (d) the name and relationship of all beneficiaries entitled to any part of the estate under the will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the PEF Code, or otherwise, and whether any of

them is a minor, incompetent or deceased with the name of his Fiduciary, if any;

(e) the person or person, if any, entitled to the family exemption and, if a claim therefore is made in the petition, any additional facts necessary to establish the right to the family exemption;

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

(g) a list showing the nature, amounts and preferences of all unpaid claimants against the estate and indicating which claims are admitted;

(h) if any unpaid beneficiary, heir or claimant has not joined in the petition, a statement that notice of the intention to present the petition has been given as required by these rules; and

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

(j) There shall be attached to the petition the following exhibits:

(1) the original of the decedent's will if it has not been probated, or a copy thereof if it has been probated;

(2) the joinders or consents of unpaid beneficiaries, heirs and claimants insofar as they are obtainable;

(3) an itemized list of disbursements made prior to the filing of the petition, indicating the payor and whether the disbursements were in payment of administration expenses, preferred or ordinary debts, items of distribution or the family exemption; and

(4) a certificate of the Register showing the status of payment of the inheritance tax.

(k) No appraisal shall be required unless ordered by the Court.

Note: See PEF Code §3102.

Adopted May 15, 1990, effective July 1, 1990.

**Rule 6.12. Status Report of Personal Representative**

**[Pub. Note: The following is the text of Rule 6.12 and Status Report form as adopted effective January 1, 1984. On April 30, 1992 the Supreme Court issued Order No. 103, Supreme Court Rules docket No. 1, which provides: “Existing Rule 6.12 requiring the filing of status reports by a personal representative is repealed and new Rule 6.12 is adopted in its place. These changes shall apply to decedents dying on or after July 1, 1992.” Se new Rule 6.12 following this Rule and Status Report form.]**

**(a) The personal representative of each resident decedent dying after July 1, 1984, or counsel for the estate shall file a report of the status of the administration of the estate with the Register for transmission to the Court no later than the due date for filing the inheritance tax return for the estate or, if no inheritance tax return is required, nine months after the date of death. If the administration of the estate has not been concluded, similar reports shall be filed annually thereafter until the administration is complete. Each report shall indicate whether or not the administration of the estate has been concluded, the total value of assets that have been distributed to beneficiaries and the total amount paid to creditors or applied for funeral and expenses of administration and, if the administration has not yet been concluded, the estimated value of the assets still under administration. If the administration of the estate has been concluded, the report shall also indicate whether a final account of the administration of the estate has been filed with the Court and, if not, whether an account was stated to the parties in interest and whether they have approved the same.**

**(b) If any required report is not filed when due, the Register shall notify counsel for the estate, if any and shall periodically submit to the Court, for transmission to the Court Administrator of Pennsylvania, a list of all counsel of record in estates where the report has not been filed and more than sixty (60) days have elapsed since mailing of the notice of delinquency.**

**(c) No fees shall be charged for filing the reports required by this rule.**

**(SAMPLE FORM)<sup>1</sup>**

<sup>1</sup>Sample form is omitted. For text of the sample form, see PA.O.C. Rule 6.12 in the Pennsylvania Rules of Court Desk Copy.

## **Rule 6.12 Status Report by Personal Representative**

[Pub. Note: The following is the text of Rule 6.12 and Status Report form as adopted April 20, 1992 to apply to decedents dying on or after July 1, 1992. See the former Rule 6.12 and Status Report form preceding this Rule.]

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

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

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

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

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

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

**(f) Failure to File a Report. After at least ten (10) days prior notice to a delinquent personal representative and counsel, the Clerk of the Orphans' Court shall inform the Court of the failure to file the report required by this Rule with a request that the Court conduct a hearing to determine what sanctions, if any, should be imposed.**

**(PRESCRIBED FORM)<sup>1</sup>**

<sup>1</sup>Prescribed form in omitted. For text of the prescribed form, see Pa.O.C. Rule 6.12 in the Pennsylvania Rules of Court Desk Copy.

Rule 6.12-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

**RULE 7. EXCEPTIONS**

**Rule 7.1. Exceptions**

**Exceptions shall be filed at such place and time, and shall be in such form, copies thereof served and disposition made thereof as local rules shall prescribe.**

[REPEALED]

Adopted May 15, 1990, effective July 1, 1990; repealed December 29, 2004, effective December 29, 2004.

**EXCEPTIONS – FORMS**

Rule 7.1-1. No Exceptions shall be filed to decrees, adjudications, confirmations or other decisions or orders of court entered in proceedings unless the right to except thereto is expressly conferred by Act of Assembly, by general rule, or by special order; and all decrees, adjudications, confirmations or other decisions or orders of court, other than those to which Exceptions are so allowed to be taken shall be final and definitive.

Adopted May 15, 1990, effective July 1, 1990.

**EXCEPTIONS – FILING**

Rule 7.1-2. Exceptions shall be filed with the Clerk.

Adopted May 15, 1990, effective July 1, 1990; repealed in part and amended in part December 29, 2004, effective December 29, 2004.

## **RULE 8. AUDITORS AND MASTERS**

### **Rule 8.1. Notice of Hearings**

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

#### NOTICE OF HEARINGS

Rule 8.1-1. On appointment, the auditor shall schedule a hearing and give notice thereof to all parties in interest at least ~~ten~~ twenty days prior to the hearing.

Note: Notwithstanding Pa.O.C. Rule 8.1, see Pa.O.C. Rule 5.1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

Adopted May 15, 1990, effective July 1, 1990.

#### MASTERS

Rule 8.1-2. Rules pertaining to auditors shall extend to masters insofar as applicable.

### **Rule 8.2. Filing of Report**

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

#### WHERE FILED

Rule 8.2-1. Reports of auditors and masters shall be filed with the Clerk.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 8.3. Form of Auditor's Report**

**An auditor's report shall include a statement of questions involved, findings of fact, conclusions of law, and, if the account is approved by the auditor, it shall also expressly confirm the account and shall specify, or indicate by reference to the statement of proposed distribution, the names of the persons to whom the**

**balance available for distribution is awarded and the amount or share awarded to each of such persons.**

Rule 8.3-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 8.4. Form of Master's Report**

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

Rule 8.4-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 8.5. Transcript of Testimony**

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

Rule 8.5-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 8.6. Notice of Filing Report**

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

**NOTICE OF COMPLETION OF REPORT**

Rule 8.6-1. The auditor or master shall file his report and give notice thereof to all parties in interest.

Note: Notwithstanding Pa.O.C. Rule 8.6, see Pa.O.C. Rule 5.1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

**Rule 8.7. Confirmation of Report**

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

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

CONFIRMATION

Rule 8.7-1. [No revision required, except as noted]

OBJECTIONS

Rule 8.7-2. Objections to the auditor's report shall be filed with the Clerk within twenty days after receipt of the notice of filing of said report. Objections shall be specific as to the basis of the Objection whether as to the findings of fact or conclusions of law, or both.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

DISPOSITION OF OBJECTIONS

Rule 8.7-3. [No revision required, except as noted]

**Rule 8.8. Security for Expenses and Fees**

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

Rule 8.8-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

**RULE 9. OFFICIAL EXAMINERS**

## **Rule 9.1. Appointment of Official Examiners**

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

### APPOINTMENT OF OFFICIAL EXAMINERS

Rule 9.1-1. Rules pertaining to masters shall extend to official examiners.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## **RULE 10. REGISTER OF WILLS**

### **Rule 10.1. Procedure and Forms**

**The practice, procedure and forms used before a Register of Wills shall be in substantial conformity with the practice, procedure and forms<sup>1</sup> approved by the Supreme Court of this Commonwealth or, in the absence thereof, the practice, procedure and forms approved by the local Orphans' Court Division.**

<sup>1</sup> For text of recommended forms, see Forms following the Orphans' Court Rules in the Pennsylvania Rules of Court Desk Copy.

### GENERAL RULE – PETITIONS

Rule 10.1-1. Proceedings before the Register, including adverse letters proceedings and proceedings for the admission of lost wills, unless specifically governed by another provision of these Rules, shall be by Petition as provided herein.

(a) A petition shall set forth:

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

(b) The petitioner shall attach to the petition:

(1) a form of the order or decree, as applicable; and

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

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

(d) The petitioner, at petitioner's expense, shall be responsible for the furnishing of a stenographer and the preparation of a stenographic record of any hearing conducted pursuant to the petition.

Adopted December 29, 2004, effective December 29, 2004.

## FORMS

Rule 10.1-2. Forms with respect to probate and the grant of letters testamentary and letters of administration shall be in substantial conformity with the approved forms under Pa.O.C. Rule 10.1, and in the absence thereof shall be as set forth in Appendix A and identified as follows:

(a) Petition for Probate and Grant of Letters.

(b) Petition for Grant of Letters of Administration.

(c) Certificate of Grant of Letters (Will).

(d) Certificate of Grant of Letters (Intestacy).

(e) Bond and Surety for Personal Representative.

(f) Short Certificate (Letters Testamentary).

(g) Short Certificate (Letters of Administration).

(h) Oath of Subscribing Witness.

(i) Oath of Non-Subscribing Witness.

(j) Oath of Witness to Will Executed by Mark.

(k) Renunciation.

Adopted December 29, 2004, effective December 29, 2004.

## PETITIONS – CERTIFICATION OF RECORD

Rule 10.1-3. When a record is certified to the Court by the Register, or it is desired that the Court direct the Register to certify the record, or if an appeal is taken, a petition shall be promptly presented to the Court to fix a date for a hearing which shall set forth:

- (a) the nature of the proceedings before the Register;
- (b) the basis for the certification, requested certification or appeal; and
- (c) the names of all parties in interest, including any not a party of record.

Note: See PEF Code §907.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### PETITIONER

Rule 10.1-4. When the record has been certified by the Register, the petition required by Rule 10.1-3 may be presented by any party in interest.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### CITATION

Rule 10.1-5. Upon allowance of the petition filed pursuant to Rule 10.1-3, a citation shall be awarded directing all parties in interest, including those not represented on the record, to show cause why the matter certified should not be determined on the hearing date or why the Register should not be directed to certify the record to the Court or why the appeal should not be sustained and the judicial act or proceeding complained of be set aside, all of which shall be returnable fifteen days after service.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### DISPOSITION

Rule 10.1-6. If no answer is filed; in response to the petition filed pursuant to Rule 10.1-3, upon proof of service of the citation the Court may grant the requested relief. If an answer is filed, the Clerk shall notify the Court, which shall fix a time for hearing.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## **Rule 10.2 Appeals from the Register of Wills**

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

### FORM OF APPEAL

Rule 10.2-1. Appeals taken from the judicial act or proceedings of the Register shall be addressed to the Court, but filed in duplicate with the Register and shall set forth the information insofar as appropriate required under C.C.O.C.R. 10.1-3.

Note: See PEF Code §908, as amended.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### INHERITANCE TAX APPEALS

Rule 10.2-2. The practice and procedure in inheritance tax appeals shall be governed insofar as appropriate by the requirements of C.C.O.C.R. 10.1-3 to 10.1-6, inclusive.

Note: See 72 P.S. §9176 and §9186.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

**APPENDIX A**

**C.C.O.C.R. FORMS**

(The Local Forms are a Word document and are to be inserted here.)

## **RULE 11. JURY TRIALS**

### **Rule 11.1. Selection of Jurors**

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

#### **LISTING FOR TRIAL**

Rule 11.1-1. Any matter to be tried by a jury shall be listed for trial by filing a praecipe in triplicate with the Clerk who shall transmit to the Prothonotary two copies thereof directing the Prothonotary to list the matter for civil trial. In all other respects, the listing of a matter for trial shall be in accordance with C.C.R.P.

Note: See Pa.O.C. Rule 3.1, Pa.R.C.P. 1513, and PEF Code §777 and §778. See also C.C.R.P. 3 and 214-1 to 214-3, inclusive.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 11.2. Conduct of a Trial**

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

Rule 11.1-2. [RESERVED]

Note: No local rule required. See C.C.R.P. 212-1 to 227.1-2, inclusive.

Adopted May 15, 1990, effective July 1, 1990.

## **RULE 12. SPECIAL PETITIONS**

### **Rule 12.1. Family Exemption**

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

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

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

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

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

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

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

#### ADDITIONAL CONTENTS OF PETITION

Rule 12.1-1. A petition for the family exemption shall set forth, in addition:

- (a) the name, residence and date of death of the 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 is the surviving spouse, the date and place of the marriage; and if a common law marriage is asserted, all averments necessary to establish the validity of the marriage;
- (d) whether the decedent died testate or intestate; whether, when and to whom letters were granted; and the names, relationship, and addresses of those interested in the estate; and
- (e) the location, description and value of the property claimed.

Note: See Pa.O.C. Rule 3.5 and C.C.O.C.R. 3.2-1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## EXEMPTION CLAIMED IN PERSONALTY – APPRAISAL

Rule 12.1–2. No appraisal shall be required when the exemption is claimed from cash, financial institution deposits, listed securities or any other personalty at valuations agreed upon by all parties in interest. When the exemption is claimed from other personalty, the petitioner shall submit an appraisal from a qualified appraiser.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## EXEMPTION CLAIMED IN REALTY – APPRAISALS

Rule 12.1–3. No appraisal shall be required when the exemption is claimed from realty at a valuation agreed upon by all parties in interest. When appraisals of realty from which the exemption is claimed are necessary, the Court shall appoint two qualified appraisers who shall file their appraisals within thirty days after their appointment.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## NOTICE

Rule 12.1-4. Notice of the filing of the petition together with a copy thereof and of the date fixed by the Court for confirmation, if known, shall be given to the personal representative, if any, and to every other party in interest. If appraisers have been appointed, additional notice shall be given after the appraisals have been filed together with a copy of the appraisals. The final notice hereunder shall include a statement that the setting apart of the property will be requested and may be allowed by the Court at a stated time not less than ten days from the date of giving the notice, if applicable, from the date of the last publication thereof, unless Objections are filed.

Note: See Pa.O.C. Rule 6.3.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

## OBJECTIONS

Rule 12.1-5.

(a) Voluntary Distribution. When the personal representative, at his own risk, delivers assets of the estate in satisfaction or on account of the exemption, he shall set forth the same as a credit in

the account. The same may be the subject of Objection by any party in interest.

(b) When Petition Filed. When the exemption is sought by petition, questions as to the value or allowance, or both, may be raised only by Objections filed.

(c) Higher Bid. Objections which relate only to value will be dismissed unless a bona fide higher bid for the property is filed with the Objections, or for good cause.

Note: See Pa.O.C. Rule 6.3.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### FINAL DECREE

Rule 12.1-6. When the exemption is sought by petition, if no Objections are filed, the exemption may be obtained by submitting to the Court proof of service of the notice and a form of final decree.

Note: See PEF Code §§3121 to 3126, inclusive.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 12.2. Allowance to Surviving Spouse of Intestate**

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

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

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

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

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

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

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

#### ADDITIONAL CONTENTS OF PETITION

Rule 12.2-1. A petition for the allowance to the surviving spouse of an intestate shall also set forth the information required in a petition for the family exemption under C.C.O.C.R. 12.1-1 insofar as appropriate and shall have attached thereto a copy of the inventory.

Adopted May 15, 1990, effective July 1, 1990.

#### APPRAISALS; NOTICE; OBJECTIONS; FINAL DECREE

Rule 12.2-2.

(a) The necessity of procuring appraisals and matters relating thereto shall be governed by C.C.O.C.R. 12.1-2 and 12.1-3.

(b) Notice shall be given as set forth in C.C.O.C.R. 12.1-4.

(c) The filing of Objections and entry of a final decree shall be as set forth in C.C.O.C.R. 12.1-5 and 12.1-6.

Note: See PEF Code §§2110.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

#### EXTENSION OF TIME – CONTENTS OF PETITION

Rule 12.3-1. A petition for extension of time in which the surviving spouse may file an election to take against the will shall set forth the facts relied upon to justify such extension of time.

Note: See Pa.O.C. Rule 3.5

Adopted May 15, 1990, effective July 1, 1990.

#### EXTENSION OF TIME – PRACTICE AND PROCEDURE

Rule 12.3-2. The petition shall be filed with the Clerk, and the petitioner shall thereafter give ten days notice to all persons adversely affected who do not join in the petition. Such notice shall specify the extension requested. In the absence of Objections, upon submitting to the Court

proof of service of the notice and petition, the Court may enter an appropriate decree.

Note: See PEF Code §2210(b) and C.C.O.C.R. 3.2-1.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

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

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

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

**(c) The petition shall set forth**

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

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

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

Rule 12.4-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

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

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

**(b) The petition shall set forth**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### APPEARANCE IN COURT – MINOR OVER FOURTEEN

Rule 12.5-1. If the minor is over the age of fourteen years, such minor shall appear at the presentation of the petition and make the selection of the guardian in open court. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition.

Adopted May 15, 1990, effective July 1, 1990.

#### STATEMENT OF GUARDIAN

Rule 12.5-2. The petition shall have attached thereto, in addition to consent of the guardian, a statement of the guardian with respect to the following matters:

(1) that the proposed guardian, if an individual, is a citizen of the United States of America, and is able to speak, read and write the English language;

(2) if the proposed guardian is an individual and if the proposed guardian and the minor 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) that the proposed guardian is not the Fiduciary or an officer or employee of a corporate Fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a Fiduciary, and that the proposed guardian has no interest adverse to the minor.

Note: See PEF Code §5111 to §5113, inclusive.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### SMALL ESTATES OF MINORS

Rule 12.5-3. (a) A petition for the award of an estate of a minor without the appointment of a guardian or the entry of security shall contain the following:

(1) a statement that the net value of the entire real and personal estate of the minor does not exceed statutory limitations; and

(2) the name of an insured financial institution in Cumberland County as the suggested depository.

(b) In the absence of satisfactory reasons for doing otherwise, the Court shall direct that any cash be deposited in an interest bearing account in such depository in the name of the minor or the name of a natural guardian of the minor, subject to the express restriction, to be noted on the records of the depository, that no withdrawals may be made from such account until the minor attains the age of majority, except as authorized by prior order of the Court, with the further requirement that evidence of the marking of such account to indicate the restriction be promptly filed of record.

(C) When the Court authorizes the parent or other person or institution maintaining the minor to execute a receipt, deed, mortgage or other instrument affecting property, real or personal, of the minor, it shall be conditioned on the deposit of the proceeds therefrom in an account restricted as in (b) above.

Note: See PEF Code §5101 to §5103, inclusive.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### ALLOWANCES FROM MINOR'S ESTATE

Rule 12.5-4. A petition for an allowance from a minor's estate shall set forth:

(a) the manner of the guardian's appointment and qualification and the dates thereof;

(b) the age and residence of the minor, whether his parents are living, the name of the person with whom he resides, and the name and age of his spouse and children, if any;

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

(d) the circumstance of the minor, whether employed or attending school; if any person charged with the duty of supporting such minor is living, the financial condition and income of such person and why such duty is not being discharged; and whether there was adequate provision for the support and education of the minor, his spouse and children;

(e) the date and amount of any previous allowance by the Court; and

(f) the financial requirements of the minor and his family, in detail, and the circumstances making such allowance necessary.

Note: See PEF Code §5164.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 12.6. Appointment of a Trustee**

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

**(1) the reason for filing the petition;**

**(2) the provisions of the instrument creating the trust;**

**(3) the general character, location, and value of the trust property;**

**(4) the names, addresses and relationships of all parties in interest and that those who have not joined in or consented to the petition have been given notice of the intention to file the petition, or the reason for failing to give such notice; and**

**(5) the name and address of the proposed trustee and his relationship, if any, to any party in interest and his interest, if any, in the trust.**

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

## EXHIBITS TO PETITION

Rule 12.6-1. A copy of the trust instrument shall be attached as an exhibit to the petition.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 12.7. Discharge of a Fiduciary and Surety**

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

**(1) the nature of the fiduciary capacity;**

**(2) the date and a reference to the record of the fiduciary's appointment;**

**(3) the date of filing the fiduciary's account and that it has been confirmed absolutely; and**

**(4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.**

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

### CONTENTS OF PETITION FOR DISCHARGE

Rule 12.7-1. (a) In addition, the petition shall contain an averment that all parties interested in the estate as distributees have signed releases, or shall aver a satisfactory explanation of the failure to procure such releases.

(b) In the case of a guardian of the estate of a minor who has attained the age of majority and whose gross estate does not exceed the statutory limitation for an administration without appointment of a guardian, the petition shall aver that there are no unpaid creditors and that the former

minor has consented to the petition, or aver a satisfactory explanation of the failure of the minor to consent.

Adopted May 15, 1990, effective July 1, 1990.

#### FORM OF PETITION FOR DISCHARGE – SMALL ESTATES

Rule 12.7-2. A petition for discharge of a personal representative and/or his surety under the provisions of PEF Code §3531 shall conform insofar as appropriate to the requirements for a petition under C.C.O.C.R. 6.11-2.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 12.8. Partition**

**A petition for partition shall set forth**

**(a) the date of the decedent's death and whether he died testate or intestate, in whole or in part;**

**(b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;**

**(c) the names, addresses, and relationship of those interested in the land to be partitioned, the extent of the interest of each of such persons, and, if such interest is created by a recorded deed or will, a reference to such record; and**

**(d) a request for a citation upon the parties in interest who have not joined as petitioners to show cause why an inquest in partition should not be granted.**

Rule 12.8-1. [RESERVED]

Note: No local rule required. However, by definition, “[s]ubdivision” includes partition by the court for distribution to heirs or devisees. See “Pennsylvania Municipalities Planning Code,” 53 P.S. §10107.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### **Rule 12.9. Public Sale of Real Property**

**(a) A petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the**

**size and location of the property to be sold, and the liens and charges to which it is subject.**

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

ADDITIONAL CONTENTS OF PETITION FOR PUBLIC SALE

Rule 12.9-1. (a) Public Sale by Personal Representative. A petition by a personal representative to sell real property at public sale shall set forth, in addition:

- (1) how title was acquired and reference to the document of acquisition;
- (2) the name, residence and date of death of the decedent, whether the decedent died intestate or testate, and the date of the grant of letters;
- (3) that the personal representative is not otherwise authorized to sell or is denied the power to sell by the will, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons therefore;
- (4) if an inventory has been filed, the value of the real property to be sold shown therein; or if no inventory has been filed, the estimated value of such property;
- (5) if the personal representative entered bond with the Register, the name of the surety and amount of such bond;
- (6) the names and relationships of all parties in interest; a brief description of their interests; whether any of them is a minor, incompetent or deceased, and if so, the name and record of the appointment of his Fiduciary and the age and next of kin of any minor;
- (7) a legal description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value, if known, and its current tax assessment and tax parcel number; and
- (8) sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) Public Sale by Trustee. A petition by a trustee to sell real property at public sale shall conform insofar as appropriate to the requirements for a petition under C.C.O.C.R. 12.9-1 (a), and, in addition, shall set forth:

- (1) a reference to the relevant provisions of the will, deed or trust instrument pertaining to the real property to be sold;
- (2) that the trustee is not otherwise authorized to sell or is denied the power to sell by the trust provisions, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons therefore; and
- (3) sufficient facts to enable the Court to determine that the sale is in the best interests of the trust and its beneficiaries.

(c) Public Sale by Guardian. A petition by a guardian to sell real property at public sale shall conform insofar as appropriate to the requirements for a petition under C.C.O.C.R. 12.9-1 (a) and 12.9-1 (b), and in addition, shall set forth:

- (1) the age of the minor or the incapacitated person;
- (2) the names of the minor's or incapacitated person's next of kin, and the notice given to them of the presentation of the petition;
- (3) the nature and extent of the interest of the minor or incapacitated person, of the guardian and of third persons in the real property; and
- (4) sufficient facts to enable the Court to determine that the sale is in the best interests of the minor or the incapacitated person.

Note: For sale by personal representative and generally, see PEF Code §§3351 and §3352 to §3355, inclusive. For sale by trustee, see PEF Code §7133. For sale by guardian of a minor, see PEF Code §5155. For sale by guardian of an incapacitated person, see PEF Code §5521. For public sale of personal property, the requirements of C.C.O.C.R. 12.10-1, *et seq.* shall govern to the extent appropriate.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### EXHIBITS TO PETITION

Rule 12.9-2. A copy of the will, deed or trust instrument and the decree, if any, by which the Fiduciary was appointed shall be attached as exhibits to the petition.

Adopted May 15, 1990, effective July 1, 1990.

## NOTICE AND CONFIRMATION OF PUBLIC SALE; ADDITIONAL SECURITY

Rule 12.9-3. (a) After allowance of the petition, notice of such sale shall be given to all parties in interest.

(b) Return of public sale of real property for the purpose of approval or confirmation by the Court shall be by affidavit setting forth:

(1) the notice given;

(2) the price obtained; and

(3) the name and address of the purchaser, and an averment that such purchaser was the highest bidder.

(c) Notice of the filing of the return of public sale shall be given to all parties in interest. If no Objections are filed within ten days of the giving of such notice, the Court may enter a decree confirming the sale and fixing or excusing the entering of additional security, if required.

Note: See Pa.O.C. Rule 5.4.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 12.10. Private Sale of Real Property or Options Therefor**

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

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

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

**(b) The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned and, in the case of an exchange, the property to be received, that they are acquainted with the value of real estate in the locality of such property, that they are not personally interested in the proposed**

**sale, exchange or option, and that in their opinion the proposed consideration is more than can be obtained at public sale.**

#### ADDITIONAL REQUIREMENTS FOR PETITION FOR PRIVATE SALE, EXCHANGE OR GRANTING OF OPTIONS

Rule 12.10-1. A petition by a Fiduciary for the sale of real property at private sale or for the exchange or granting of an option for the sale or exchange of real property shall conform insofar as appropriate to the requirements for a petition under C.C.O.C.R. 12.9-1 by such Fiduciary.

Note: See Note to C.C.O.C.R. 12.9-1. For private sale of personalty, the requirements of C.C.O.C.R. 12.10-1, et seq. shall govern to the extent appropriate.

Adopted May 15, 1990, effective July 1, 1990.

#### EXHIBITS TO PETITION

Rule 12.10-2. In addition to the exhibits required under C.C.O.C.R. 12.9-2 and the affidavits required by Pa.O.C. Rule 12.10 (b), there shall be attached to the petition the following exhibits:

(a) a copy of the proposed agreement of sale, exchange or option;  
and

(b) the consents of the parties in interest who have not joined in the petition insofar as they are obtainable.

Adopted May 15, 1990, effective July 1, 1990.

#### NOTICE – CONFIRMATION

Rule 12.10-3. After allowance of the petition, notice of such sale shall be given to all parties in interest who have not joined in or consented to the petition. If no Objections are filed within ten days of the giving of such notice, the Court may enter a decree authorizing the sale upon the terms contained in the petition and fixing or excusing the entering of additional security, if require.

Adopted May 15, 1990, effective July 1, 1990.

#### PETITION TO FIX OR WAIVE ADDITIONAL SECURITY

Rule 12.10-4. (a) Form of Petition. In a sale, whether public or private, of real estate by a Fiduciary without benefit of an order of court directing or authorizing such sale, where he was required to give bond as such

Fiduciary, he shall present a petition to the Court before the proceeds of the sale are paid to him by the purchaser, setting forth:

- (1) the date of death of the decedent;
- (2) the date of petitioner's appointment as Fiduciary;
- (3) the amount of bond or bonds filed by petitioner, the date of such filing, and the name or names of the surety;
- (4) the total valuation of the personal estate as shown in the inventory, if any, and the total proceeds of any real estate previously sold;
- (5) a description of the real property to be sold sufficient to identify it, the name of the purchaser and the amount of the consideration to be paid; and
- (6) a prayer for an order fixing the amount of additional security or excusing the entering of such security.

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

Note: See PEF Code §3351 and §7141.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

#### **Rule 12.11. Mortgage or Lease of Real Property**

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

**(a) the information required in a petition for the public sale of real property, as nearly as may be; and**

**(b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.**

#### **MORTGAGE OR LEASE OF REAL PROPERTY; ADDITIONAL REQUIREMENTS**

Rule 12.11-1. (a) Contents of Petition. A petition to mortgage or lease real property shall conform insofar as appropriate to the requirements for a petition under C.C.O.C.R. 12.10-1, and, in addition, shall set forth:

- (1) the amount and terms of the proposed mortgage loan or lease; and

(2) sufficient facts to enable the Court to determine that the proposed mortgage or lease should be approved.

(b) Exhibits. There shall be attached to the petition the exhibits required under C.C.O.C.R. 12.9-2 and 12.10-2 (b).

(c) Notice, Confirmation and Security. After allowance of the petition, the requirements of C.C.O.C.R. 12.10-3 shall govern.

Note: See Note to C.C.O.C.R. 12.9-1.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 12.12. Inalienable Property**

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

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

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

#### **ADDITIONAL REQUIREMENTS FOR PETITION UNDER CHAPTER 83 OF THE PEF CODE**

Rule 12.12-1. (a) A petition by a Fiduciary for the sale, mortgage, lease or exchange of real property shall conform insofar as appropriate to the requirements for a petition under Pa.O.C. Rules 12.9 to 12.11, inclusive, and these Rules thereunder, by such Fiduciary.

(b) If the petitioner is not a Fiduciary, the petition shall set forth specifically the information required under C.C.O.C.R. 12.9-1 (a) (1), (6) and (7).

(c) When the petition is for a private sale or exchange, there shall be attached to the petition insofar as appropriate the exhibits required under C.C.O.C.R. 12.10-2.

(d) All petitioners shall set forth the limitations from which title is to be freed, and in the case where title is subject to an interest or interests held by one or more classes, some or not in being, the petition shall set forth

the information required under Pa.O.C. Rule 12.6 (a) (5) and shall have attached thereto the proposed trustee's written consent to the appointment.

(e) The practice and procedure with respect to notice, confirmation and security shall be governed insofar as appropriate by the requirements of C.C.O.C.R. 12.9-3, 12.10-3 and 12.10-4.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 12.13. Designation of a Successor Custodian**

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

**\*Note: The Pennsylvania Uniform Gifts to Minors Act is now Chapter 53 of the Probate, Estates and Fiduciaries Code.**

#### DESIGNATION OF A SUCCESSOR CUSTODIAN

Rule 12.13-1. [RESERVED]

Note: No local rule required. See C.C.O.C.R. 12.5-1, *et seq.* However, the Pennsylvania Uniform Gifts to Minors Act became known as the Pennsylvania Uniform Transfers to Minors Act, effective December 16, 1992.

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 12.14. Confirmation of Appointment**

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

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

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

**(b) There shall be attached to the petition**

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

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

Rule 12.14-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

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

Rule 12.15-1. [RESERVED]

Note: No local rule required.

Adopted December 29, 2004, effective December 29, 2004.

**RULE 13. DISTRIBUTION – SPECIAL SITUATIONS**

**Rule 13.1. Representation by Counsel**

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

Rule 13.1-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

**Rule 13.2. Existence and Identity**

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

Rule 13.2-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990

### **Rule 13.3. Report by Fiduciary**

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

Rule 13.3-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990

## **RULE 14. GUARDIANSHIP OF INCAPACITATED PERSONS**

### **Rule 14.1. Local Rules**

**The practice and procedure with respect to incompetents' estates shall be as prescribed by local rules, which shall not be inconsistent with Rules 2 and 3 hereof.**

Rule 14.1-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990

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

**(a) A petition to adjudicate a person incompetent and to appoint a guardian of his estate shall set forth**

**(1) the name and relationship of the petitioner to the alleged incompetent; if not related, the nature of his interest;**

**(2) the age, marital status, and domicile of the alleged incompetent; whether he is a patient in a mental hospital; if so, the name and address of the hospital, the**

**date of his admission, and whether it is a state-owned mental hospital or a Veterans Administration hospital;**

**(3) the names and addresses of the next of kin of the alleged incompetent;**

**(4) the gross value of the alleged incompetent's estate, and his net income from all sources, to the extent that this information is known by petitioner;**

**(5) whether the alleged incompetent was ever a member of the Armed Services of the United States, or is receiving any benefits from the United States Veterans Administration or its successor;**

**(6) a general averment of incompetency as defined in Chapter 55 of the Probate, Estates and Fiduciaries Code;**

**(7) the name and address of the proposed guardian, and what, if any, relationship he bears to the alleged incompetent;**

**(8) an averment that the proposed guardian has no interest adverse to the alleged incompetent;**

**(9) whether any other court has ever assumed jurisdiction in any proceeding to determine the competency of the alleged incompetent;**

**(10) that the alleged incompetent has not guardian already appointed; and**

**(11) a prayer for a citation, directed to the alleged incompetent, with notice thereof to his next of kin and to such other persons as the court may direct, to show cause why he should not be adjudged an incompetent and a guardian of his estate appointed.**

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

#### WRITTEN CONSENT

Rule 14.2-1. The proposed guardian's written consent to the appointment shall be attached to the petition.

Note: See Pa.O.C. Rule 12.5(c).

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

### **Rule 14.3. Review Hearing**

**A petition to adjudicate that a person previously adjudged incompetent has become competent shall set forth**

- (1) the date of the adjudication of incompetency;**
- (2) the name and address of the guardian;**
- (3) if the incompetent has been a patient in a mental hospital, the name of such institution, the date of his admission, and the date of discharge;**
- (4) the present address of the incompetent, and the name of the person with whom he is living;**
- (5) the names and addresses of the next of kin of the incompetent; and**
- (6) an averment that the mental health of the incompetent has been restored.**

Adopted May 15, 1990, effective July 1, 1990; repealed December 29, 2004, effective December 29, 2004.

#### **NOTICE**

Rule 14.3-1. The petitioner shall give notice of the hearing to the guardian if he is not the petitioner and to the next of kin of the incompetent. At the hearing on the petition, proof of service of the notice and petition shall be submitted to the Court

Adopted May 15, 1990, effective July 1, 1990; repealed in part and amended in part December 29, 2004, effective December 29, 2004.

### **Rule 14.4. Proceedings Relating to Real Estate**

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

Rule 14.4-1. [RESERVED]

Note: No local rule required. See Pa.O.C. Rules 12.9 to 12.11, inclusive, and these Rules thereunder.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 14.5. Form of Citation and Notice**

Rule 14.5-1. [RESERVED]

Note: No local rule required.

Adopted December 29, 2004, effective December 29, 2004.

### **RULE 15. ADOPTIONS<sup>1</sup>**

<sup>1</sup>Footnote is omitted. For text of the footnote, see Pa.O.C. 15 in the Pennsylvania Rules of Court Desk Copy.

#### **Rule 15.1. Local Rules**

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

#### **PRACTICE AND PROCEDURE**

Rule 15.1-1 All reports and petitions relating to adoption shall be filed with the Register or-Clerk and shall be in such form as is designated from time to time by the Court. After such report or petition has been fully indexed as set forth in C.C.O.C.R. 15.7-1, the same shall be placed in a file retained in the custody of the Clerk with notification of the petition being forwarded to the Court Administrator for assignment to a judge. Once assignment has been made, the Clerk shall directly deliver the file to the hearing judge. Upon the completion of any proceedings relative to adoption, the file shall be returned to the custody of the Clerk and all documents in connection therewith shall be handled in the manner set forth in C.C.O.C.R. 15.7-1.

All reports, petitions, orders or other necessary documents shall be filed with the Clerk and shall be in such form as is designated from time to time by the Court. After such documents have been filed and fully indexed as set forth in C.C.O.C.R. 15.7-1, the Clerk shall place those documents in

the indexed file. If the file is in the custody of the hearing judge, after clocking in the documents the Clerk shall directly deliver them to the hearing judge to be placed in the file.

Note: See PEF Code §711.

Adopted May 15, 1990, effective July 1, 1990; amended June 1, 1999, effective August 1, 1999; amended December 29, 2004, effective December 29, 2004.

## **Rule 15.2. Voluntary Relinquishment to Agency<sup>1</sup>**

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

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

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

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

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

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

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

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

**(8) the reasons for seeking relinquishment;**

**(9) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner**

believes to be in petitioner's and the child's best interests.

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

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

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

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

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

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

<sup>1</sup>Footnote is omitted. For text of the footnote, see Pa.O.C. Rule 15.2 in the Pennsylvania Rules of Court Desk Copy.

Rule 15.2-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 15.3. Voluntary Relinquishment to Adult Intending to Adopt Child**

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

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

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

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

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

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

Rule 15.3-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

#### **Rule 15.4. Involuntary Termination of Parental Rights<sup>1</sup>**

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

**(1) the name and address of the petitioner and his or her standing;**

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

**(3) the name, address, age, racial background and religious affiliation of the parent or parents, including the father of a child born out of wedlock, if he has been identified;**

**(4) the marital status of the mother as of the time of birth of the child and during one year prior thereto and,**

if the mother has ever been married, the name of her husband or husbands and her maiden name;

(5) the date when the child was placed in the care of the petitioner;

(6) facts constituting grounds for the involuntary termination under Section 311 of the Adoption Act, and a reference to the applicable subsection or subsections;

(7) whether either parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. §501 et seq.);

(8) that the petitioner will assume custody of the child until such time as the child is adopted.

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

(1) a birth certificate or certification of registration of birth of the child;

(2) the joinder of a parent of a petitioner who is under the age of 18, unless excused by the court.

(c) **Guardian ad Litem.**

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

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

(d) **Notice and Hearing.** Notice of the hearing on the petition shall be given, in accordance with Rule 15.6 hereof, to the parent or parents whose rights are sought to be terminated, including the parent of a child born out of wedlock, to any intermediary named

in a Report of Intention to Adopt, if one has been filed, and to the guardian of the person or guardian ad litem of any parent or parents who is or are under the age of 18 years. Each petitioner, each person whose joinder or consent is attached to the petition and any intermediary named in a Report of Intention to Adopt shall be examined under oath at the hearing unless they are excused by the court.

<sup>1</sup>Footnote is omitted. For text of the footnote, see Pa.O.C. Rule 15.4 in the Pennsylvania Rules of Court Desk Copy.

Rule 15.4-1. [RESERVED]

Note: No local rule required.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 15.5. Adoption<sup>1</sup>**

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

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

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

(2) he or she has voluntarily relinquished his or her parental rights in a proceeding under Rule 15.2 or Rule 15.3, or

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

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

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

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

<sup>1</sup> and <sup>2</sup> Footnotes are omitted. For text of the footnotes, see Pa.O.C. Rule 15.5 in the Pennsylvania Rules of Court Desk Copy.

## ADOPTION

Rule 15.5-1. Unless a decree of involuntary termination or of voluntary relinquishment has been entered, the natural parents, whose consents are required, shall appear and be heard before the hearing judge in all adoption proceedings unless specifically excused by such judge. Where the natural parent or parents reside outside the Commonwealth, or at a considerable distance from Cumberland County, they may appear for the purpose of consenting to the proposed adoption before a judge of a court of record selected and/or approved by the hearing judge, the natural parent or parents shall appear for a hearing at a time different from that fixed to hear the testimony of the petitioners.

Note: Pa.O.C. Rule 15.5(b) (1) appears to be inconsistent with Section 421 of the Adoption Act, as amended, 23 Pa. C.S. §2721, which provides that notice of the hearing shall be given to all persons whose consents are required.

Adopted May 15, 1990, effective July 1, 1990.

### **Rule 15.6. Notice; Method and Time**

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

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

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

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

Rule 15.6-1. [RESERVED]

Note: No local rule required

Adopted May 15, 1990, effective July 1, 1990.

**Rule 15.7. Impounding; Docket Entries; Reports; Privacy**

**(a) All proceedings shall be impounded, docket entries made, reports made to the Department of Public Welfare, and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act.**

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

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

**IMPOUNDING; DOCKET ENTRIES; REPORTS; PRIVACY**

Rule 15.7-1. The docket entries regarding an adoption shall carry the name of the adoptee prior to adoption only, and shall carry no information regarding the name or identifying information regarding the petitioner or petitioners. The docket shall carry only the name and the date of each paper filed and shall also carry the date and reference to final action, which entry shall consist merely of a notation that either a decree was entered or the petition was dismissed. All proceedings respecting the adoptee, beginning with the filing of a report of intention to adopt or a petition for relinquishment or involuntary termination and continuing through to the petition for adoption shall be entered to the same number and year. Upon the completion of any such proceeding, all documents in connection therewith shall be impounded and shall be sealed in an appropriate packet, with the restriction noted thereon that the packet shall not be opened except as authorized by prior order of the Court, and thereafter shall be retained in the custody of the proper court official.

Note: See 23 Pa. C.S. §2905 to §2910, inclusive, and C.C.O.C.R. 1.2-2(c).

Adopted May 15, 1990, effective July 1, 1990; amended December 29, 2004, effective December 29, 2004.

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

**Headings for Pa.O.C. Rules 16.1 to 16.6, inclusive, and Rules 16.10 to 16.12, inclusive, are intentionally omitted (Rules 16.7 and 16.8 rescinded March 31, 1994).**

Rules 16.1-1 to 16.6-1, inclusive, and Rules 16.10-1 to 16.12-1, inclusive [RESERVED]

Note: No local rules required.

Adopted December 29, 2004, effective December 29, 2004.

**RULE 17. SHORT TITLE**

**These rules shall be known as Supreme Court Orphans' Court Rules, and shall be cited as Pa.O.C. Rules.**

Rule 17-1. [RESERVED]

Note: No local rule required. See C.C.O.C.R. 1.2-1 (b).

Adopted May 15, 1990, effective July 1, 1990.