

PART III
LOCAL ORPHANS' COURT RULES
(cited as L.O.C. Rule ____)

**PRACTICE RELATING TO CERTAIN
PETITIONS, MOTIONS and APPLICATIONS**

Rule 1.2A Definition. Parties in Interest

"Parties in interest" can include intestate heirs, legatees, devisees, residuary heirs, beneficiaries, creditors, claimants, and lienholders. Who the parties in interest are in a particular situation will depend upon the circumstances.

Comment

The definition does not contain an exhaustive list. For instance, 20 Pa.C.S. §767 authorizes the Court to join a taxing authority as a party in interest when the interests of the taxing authority may be adversely affected in a proceeding before the Court. This may be done *sua sponte* or upon motion of a party.

Rule 1.2B Filing with Clerk. Format.

(a) All petitions, motions and applications shall be filed with the Clerk.

(b) All petitions and other legal papers shall be 8½" x 11" in size and shall be stapled in the left margin. Staples shall be the sole means by which the pages are fastened. Pages shall be typewritten or printed.

Rule 1.2C Contents of Petition. Exhibits. Consents. Order

(a) In addition to the items required by Pa.O.C. Rule 3.4(a), a petition shall set forth the names and addresses of all persons who are parties in interest.

(b) In addition to the items required by Pa.O.C. Rule 3.4(b), a petitioner shall attach to the petition true and correct copies of all wills, deeds, contracts, and other instruments pertaining thereto. The petition shall state the place, if any, where the instruments may be found of record. The petition shall state whether or not a similar petition has been filed with or presented to any other court in the Commonwealth of Pennsylvania and, if it has, the result thereof. In the case of a petition for the settlement of a small estate, an original copy of the decedent's death certificate shall be attached thereto.

(c) Whenever a party in interest other than a petitioner desires to consent to or join in the prayer of a petition, there shall be attached to the petition a written consent signed by the party in substantially the form prescribed by Appendix K of these Local Rules. All consents shall be signed by at least one witness.

(d) Every petition shall have an appropriate order attached thereto. A petition seeking the award of a citation shall have attached thereto an order awarding a citation, substantially in the form of the order prescribed by Appendix L of these Local Rules.

Adopted October 3, 2006, effective November 20, 2006

Rule 1.2D Petitions Requiring Notice After Filing. Proof of Service. Answers

(a) Except as provided in subsection (d), below, notice of the filing of a petition shall be given to all parties in interest whose consents are not attached. A copy of the petition shall be attached to the notice. The notice shall be substantially in the form prescribed by Appendix M of these Local Rules. The notice shall state that the party in interest has twenty (20) days after the date of its service upon him to file an answer to the petition; provided, however, that the Court may set a shorter period of time within which an answer may be filed or may set a date certain by which the same may be done, for good cause alleged in the petition itself.

(b) The petitioner shall file a proof of service of notice.

(c) A party in interest may file a written answer to the petition at any time within the time limit set forth in the notice. "Answer," as the term is used in this rule, includes not only a formal answer admitting or denying the factual averments of the petition, but also a preliminary objection or any other objection or disagreement with the petition or the relief being sought. All answers shall be filed with the Clerk. A copy of the answer shall be served upon the petitioner or petitioner's attorney. A proof of service shall be filed thereafter.

(d) The provisions of this rule shall not apply to petitions

(i) where all parties in interest are petitioners or consent to the granting thereof;

(ii) when notice requirements are dispensed with by pertinent rule or statute, or when good

cause is shown for dispensing with notice

- requirements;
- (iii) seeking the issuance of a citation;
 - (iv) seeking the appointment of a guardian for an alleged incapacitated person;
 - (v) for termination of parental rights;
 - (vi) for adoption; and
 - (vii) for compromise, settlement, and distribution of a minor's claim.

Notice of petitions described in clauses (iii), (iv), (v) and (vi) shall be given as prescribed by applicable rule or statute. Notice of petitions described in clause (vii) shall be given as prescribed by L.O.C.R. 12.16.

Adopted April 29, 2008, effective June 17, 2008

RULES OF CONSTRUCTION

Rule 2.1A Construction of Rules

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

Rule 2.2A Waiver of Time Limitation

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

Rule 2.3A Words and Phrases

Unless the context clearly indicates otherwise, the words and phrases used herein shall bear the same meaning as they bear in the Pennsylvania Orphans' Court Rules.

PLEADING AND PRACTICE

Rule 3.2A Permissible Pleadings

The pleadings in matters before this Court shall be limited

to a petition, an answer, new matter, a reply, preliminary objections, and an answer to preliminary objections.

Rule 3.2B Endorsement. Signature. Verification

(a) Every pleading shall be endorsed with the name, address, telephone number and Supreme Court identification number of counsel and the party on whose behalf the pleading is filed.

(b) Every pleading shall be signed by the attorney, and where facts outside the record are averred, shall be verified by one or more of the parties. If this is impracticable, it may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to sign shall be set forth.

Rule 3.5A Mode of Proceeding on Petition.

(a) The mode of 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, the mode of proceeding shall be by notice as prescribed by Rule 1.2D of these rules. A copy of the petition shall be served with the citation or notice unless service is made by publication.

(b) No citation will be awarded which commands a party to personally appear before the Court, unless the order awarding the citation specifically directs that such a command be contained therein.

Comment

In the Orphans' Court, a citation is the proper process by which initial personal jurisdiction over the person is obtained. *In re: Hicks' Estate*, 414 Pa. 131, 199 A.2d 283 (1964).

Rule 3.5B Citation Where Jurisdiction Over the Person is Required. Personal Service. Proof of Service

(a) A citation where jurisdiction over the person is required shall be served in the manner prescribed by 20 Pa.C.S. §765, when the person can be served within the Commonwealth.

(b) Proof of personal service of the citation shall be by affidavit of the person or the return of the sheriff making service. It shall state the date, time, place, and manner of service and that true copies of the citation and petition were handed to the respondent.

Comment

20 Pa.C.S. §765 governs the service within the Commonwealth of a citation to obtain personal jurisdiction. *Kelsey Estate* 31 D & C 170 (1963).

20 Pa.C.S. §768 anticipates the possibility of a citation being awarded and issued even when personal jurisdiction over a respondent is not required. In such a situation, the citation itself would constitute notice and the rules pertaining to service of notice will apply.

Rule 3.5C Citation Where Jurisdiction Over the Person is Required. Service by Mail. Proof of Service

(a) When a citation to obtain jurisdiction over a person is to be served upon a person outside the Commonwealth, service of the citation may be accomplished by certified mail, return receipt requested, within the United States and registered mail elsewhere.

(b) When service of the citation is by certified mail, the affidavit of service shall state that the return receipt bears a signature purporting to be that of the respondent, his agent, or a member of his household. The return receipt shall be filed with the affidavit. When service is by registered mail, proofs of mailing shall be filed with the affidavit.

Comment

Despite the authorization by this rule to serve original process by mail upon non-residents of the Commonwealth, the Due Process Clause of the Fourteenth Amendment can operate as a limitation on the jurisdiction of our courts.

20 Pa.C.S. §768 anticipates the possibility of a citation being awarded and issued even when personal jurisdiction over a respondent is not required. In such a situation, the citation itself would constitute notice and the rules pertaining to service of notice will apply.

Rule 3.5D Citation Where Jurisdiction Over the Person is Required. Service by Publication. Proof of Service

(a) When a citation to obtain personal jurisdiction over a person cannot be served personally or by mail because the person cannot be found, the Court may, upon motion, authorize service by publication. Notice in advance of the presentation of such a motion is not required. When the last known residence of the respondent was in Armstrong County, such service shall be by publication once a week for three (3) successive weeks in a newspaper of general circulation published in the County and in the Armstrong County Legal Journal. If the respondent's last

known residence was not in Armstrong County or is unknown, the

publication shall be as the Court may direct. The first publication shall not be less than twenty-one (21) days before the last day to file an answer.

(b) When service of the citation is by publication, the return shall consist of the proofs of publication verified by the affidavits of the publishers.

Comment

20 Pa.C.S. §768 anticipates the possibility of a citation being awarded and issued even when personal jurisdiction over a respondent is not required. In such a situation, the citation itself would constitute notice and the rules pertaining to service of notice will apply.

Rule 3.5E Preliminary Objections. Answers

The practice and procedure relating to preliminary objections and answers thereto shall be governed by the pertinent Pennsylvania Rules of Civil Procedure as implemented by the Local Rules of Civil Procedure, including those requiring the filing of proposed scheduling orders.

Rule 3.5F Disposition of Issues Raised by Pleadings

(a) If the respondent fails to file an answer, the averments of fact set forth in the petition shall be deemed admitted and the Court may enter a decree granting the prayer of the petition.

- (i) In proceedings where personal jurisdiction over the person served was not required, the petitioner shall file a praecipe with the Clerk directing the Clerk forthwith to transmit the record to the Court. The praecipe shall be substantially in the form prescribed by Appendix N of these Local Rules.
- (ii) In proceedings where personal jurisdiction over the person served was required, the petitioner shall present a motion for order to transmit the record at any duly scheduled session of Motions Court in accordance with the Local Rule of Civil Procedure pertaining thereto. The motion shall state all the relevant facts of record, including the name of the petitioner, the type of petition, the date of service upon the respondent, the fact that a proof of service was filed as

required by local rule, and the fact that no answer was filed by the respondent. The motion shall have attached thereto a proposed order in the form prescribed by Appendix O of these Local Rules.

When there is more than one respondent, the Court may, in its discretion, refrain from acting until the last date has passed on which any respondent could have filed an answer.

(b) If the petitioner fails to file a reply to an answer which contains new matter, the averments of fact set forth under new matter shall be deemed admitted and the case will be at issue.

(c) If the petitioner fails to file an answer to properly and appropriately pleaded factual averments of preliminary objections, the averments of fact set forth in said preliminary objections shall be deemed admitted, and the case will be at issue on the preliminary objections.

(d) The Court may, upon motion in appropriate cases, enter judgment on the pleadings in favor of any party or parties entitled thereto.

Comment

Subsection (a)(ii) provides a greater degree of protection, in default situations, to a respondent when personal jurisdiction over him must be obtained. This results from the additional notice requirements set forth in the Local Rule of Civil Procedure pertaining to Motions Court.

Rule 3.5G Motion for Judgment on the Pleadings

The practice and procedure relating to motions for judgment on the pleadings shall be governed by the pertinent Pennsylvania Rules of Civil Procedure, as implemented by the Local Rules of Civil Procedure, including those requiring the filing of proposed scheduling orders. Notice in advance of the filing of such a motion is not required.

Rule 3.5H Service of Pleadings and Legal Papers, Other than Petitions

Pleadings and legal papers, other than petitions, shall be served by the filer in the manner prescribed by Pa.R.C.P. No. 440, as implemented by the Local Rules of Civil Procedure, except that all filings shall be with the Clerk.

Comment

The methods of service of citations to obtain personal jurisdiction over the person are found at Rule 3.5B through Rule 3.5D of these rules. The methods of service of notice, including notice of the filing of a petition, are found at Rule 5.1A of these rules.

Rule 3.5I Jury Trial

A person entitled to and desiring a trial by jury shall make timely demand therefor in accordance with 20 Pa.C.S. §777.

Rule 3.5J Trials. Jury and Non-jury. Pre-trial Conference List. Motion for Non-jury trial without Pre-trial Conference

(a) When pleadings have been filed by the parties in conformity with prescribed procedure, or when the time for filing additional pleadings has expired, the matter may be placed on the Pre-trial Conference List by filing a praecipe with the Clerk. The Clerk shall deliver a copy thereof to the Prothonotary, and the case shall thereafter proceed as if it were an action in equity in the Civil Division, except as otherwise prescribed by these rules. A copy of the praecipe shall be served as prescribed by Rule 3.5H of these rules.

(b) As an alternative to placing a case on the Pre-trial Conference List, a matter may be scheduled for non-jury trial upon motion presented at any duly scheduled session of Motions Court pursuant to Local Rules of Civil Procedure.

Comment

Under this rule, relatively simple matters may be scheduled for non-jury trial without the case being the subject of a pre-trial conference.

The Prothonotary maintains a Pre-trial Conference List in accordance with the Local Rules of Civil Procedure. All filings after the case has been placed on the Pre-trial Conference List will nonetheless continue to be made with the Clerk of the Orphans' Court Division.

Rule 3.5K Continuances

The practice and procedure relating to continuances shall be governed by the pertinent Local Rules of Civil Procedure. An application for continuance may be presented at any duly scheduled session of Motions Court pursuant to said Rules.

Rule 3.5L Costs Taxable to Fiduciary or Estate Fund

When a fiduciary, in good faith, defends the estate fund against a claim, the fiduciary shall not be personally liable for any taxable costs, and any costs otherwise taxable against him shall be taxed instead against the estate fund.

Rule 3.6A Discovery

No discovery shall be conducted except with leave of Court. After leave is granted, the permitted discovery shall be conducted as prescribed by the Pennsylvania Rules of Civil Procedure. Motions for leave to conduct discovery may be presented at any duly scheduled session of Motions Court pursuant to the Local Rules of Civil Procedure.

Rule 3.6B Subpoenas

Subpoenas, including subpoenas duces tecum, shall be issued as of course by the Clerk.

Rule 3.7A Attorneys. Appearances. Surety

(a) An endorsement of an attorney on any legal paper filed with the Clerk shall constitute a written appearance.

(b) No attorney may withdraw an appearance without leave of court unless another attorney simultaneously enters an appearance for the same party.

(c) No attorney may act as surety in any proceeding, except with leave of court.

NOTICE

Rule 5.1A Method of Notice Generally

(a) Except as may be provided otherwise by statute or by any rule adopted by the Supreme Court of Pennsylvania, and except as specifically directed or permitted otherwise by these rules, whenever notice is to be given to a person, it shall be given

- (i) by personal service upon the attorney appearing of record for such person, delivery at the office of such

attorney, or by mail; or

(ii) 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

(iii) if his residence is not known, by publication during three (3) successive calendar weeks in the legal periodical and in a newspaper of general circulation published at or near his last known address within the county; or

(iv) in such other manner as the Court shall direct.

(b) "Mail" as the term is used in subsection (a) of this rule means registered mail providing for a return receipt or certified mail providing for a return receipt, except for addresses outside the United States, in which event it means registered mail. In the event such registered or certified mail is returned to the sender as unclaimed, refused or undelivered, "mail" shall also mean ordinary mail with the return address of the sender appearing thereon. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen (15) days after mailing.

Rule 5.1B Method. Legal Publication

The legal periodical in which all publications of notice required by any statute, rule of Court or order pertaining to Orphans' Court matters is the Armstrong County Legal Journal, the address of which is Armstrong County Courthouse, Law Library, Kittanning, PA 16201.

Rule 5.2A Method. Persons Under Incapacity

(a) Notice to a person who is not sui juris and who has no guardian or trustee shall be given in such manner as the Court shall direct by special order. Such special order shall issue upon presentation of a petition reciting all known circumstances of the person that are relevant in determining who would be most concerned with his best interests. Notice in advance of the presentation of such a petition is not required.

(b) Notwithstanding the provisions of subsection (a) of this rule, when a minor's net interest in any estate is \$25,000 or

less, notice shall be given to the minor and, in addition thereto, to the parent or other person maintaining the minor.

(c) In the case of notice of the filing of an account and a statement of proposed distribution, and notwithstanding the provisions of subsection (a) of this rule, when a person who is not sui juris and who has no guardian or trustee, has no interest in the residuary estate but only a fixed interest by way of legacy or bequest, and the obligation to pay the same is fully recognized in the proposed statement of distribution, then notice shall be given to such person, and, in addition thereto, to the parent or other person maintaining him.

Comment

20 Pa.C.S. §5101 authorizes the Court to permit the distribution of a minor's share of an estate directly to the minor or the parent or other person maintaining the minor, when the share has a net value of \$25,000 or less. Notice as permitted by Rule 5.2A(b) of these rules would therefore appear to be appropriate.

Rule 5.4A Notice. Proof of Service

Proof of service of notice shall be by affidavit of the person serving, mailing, publishing or delivering such notice. A proof of service by mail or by delivery shall include the name and address of each party in interest so served. The proof of service shall be substantially in the form prescribed by Appendix O-1 of the Local Rules.

Amended October 28, 2003, effective December 22, 2003.

ACCOUNTS AND DISTRIBUTION

Rule 6.1A Form

(a) Accounts shall be substantially in the form prescribed by Appendix P of these Local Rules or in the form prescribed by Pa.O.C. Rule 6.1, at the election of the accountant. Each account shall bear the proper caption.

(b) All accounts shall be typewritten on 8½" x 11" paper and shall be stapled in the left margin. Staples shall be the sole means by which the pages are fastened.

Comment

The preferred form of the account to be filed by the personal representative of an estate in most instances is the one set forth in Appendix P.

20 Pa.C.S. §3392 pertains to the classification and order of

payment of claims and charges against the assets of an insolvent estate. The claims and charges enumerated in 20 Pa.C.S. §3392(2), (3), (4), and (5) are all to be included in that portion of the disbursements section of Appendix P labeled "Preferred Debts."

Rule 6.3A Notice to Parties in Interest. Time

(a) Notice of the filing with the Clerk of an account and a schedule of proposed distribution shall be given by the accountant to all parties in interest at least twenty (20) days prior to the date when the same will be presented to the Court for confirmation.

(b) Notice of the filing of an account and schedule of proposed distribution shall be substantially in the form prescribed by Appendix Q of these Local Rules.

Rule 6.4A Time for filing

An account must be filed no later than thirty (30) days before the regularly scheduled confirmation date published in the annual Court calendar upon which the accountant desires to have the account presented to the Court for confirmation and the statement of proposed distribution, if any, presented for approval.

Rule 6.6 Filing with Clerk of the Orphans' Court Division

All accounts shall be filed with the Clerk.

Rule 6.9A Statement of Proposed Distribution. Distribution Determined by Auditor

(a) When distribution is being proposed by an accountant, the accountant shall attach to the account, as its last page or pages, a statement of proposed distribution in the form of a proposed decree. The proposed decree shall be substantially in the form prescribed by Appendix R of these Local Rules.

(b) After confirmation of an account when no distribution has been proposed, a fiduciary may petition the Court for the appointment of an auditor to determine distribution, pursuant to Rule 8.0A of these rules.

Rule 6.10A Objections to Accounts and Statements of Proposed Distribution

(a) Objections to an account or a statement of proposed

distribution shall be in writing and shall be filed with the Clerk.

(b) Objections may be filed at anytime before the day the account is to be presented to the Court for confirmation.

(c) Objections shall be numbered consecutively and each objection shall be specific as to description or amount, raise but one issue of law or fact, and set forth briefly the reason or reasons in support thereof.

(d) Copies of the objection shall be served by the objector promptly upon the accountant and all parties in interest.

Rule 6.10B No Objections Filed

Except as otherwise provided by statute or the Pennsylvania Orphans' Court Rules, no interested party may object to or in any other manner challenge an account or statement of proposed distribution after the account has been confirmed or the proposed distribution has been approved.

Comment

An order of confirmation or approval will be in the form of a final order and not a decree nisi.

Rule 6.10C Appointment of Auditor

Pursuant to Rule 8.0A of these rules, the accountant, the objector, or any other party in interest must move for the appointment by the Court of an auditor to resolve the issues raised by the objections. The Court may, in its discretion, resolve the issues without such an appointment. Notice in advance of the presentation of such a motion is not required.

EXCEPTIONS

**Rule 7.1A No Exceptions to Orders or Decrees Generally.
Waiver of Grounds**

(a) No exceptions shall be filed to any order or decree unless permitted by the terms of such order or decree or by Pa.O.C. Rule 7.1.

(b) Exceptions to an order or decree may not be sustained unless the grounds are specified in the exceptions and were raised by petition; motion; answer; claim; objection; offer of proof; exceptions to auditor's reports, master's reports or appraisements; or other appropriate method.

Comment

Pa.O.C. Rule 7.1(e) does not permit the filing of an exception to any order in involuntary termination or adoption matters under the Adoption Act.

Rule 7.1B Exceptions to Auditor's Report, Master's Report or Appraisement. Time. Waiver of Grounds

(a) Exceptions to an auditor's report, a master's report, or an appraisement must be filed within ten (10) days after its date of filing. If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

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

Rule 7.1C Form of Exceptions. Place of Filing

(a) Exceptions, whether to an order or decree, auditor's report, master's report, or appraisement, shall be in writing filed with the Clerk.

(b) Exceptions shall be set forth in consecutively numbered paragraphs, each paragraph raising but one issue, and stating the ground or grounds therefor. Exceptions shall be signed by the exceptant or the exceptant's attorney.

AUDITORS AND MASTERS

Rule 8.0A Appointment. Petition.

a) The Court, on its own motion or upon petition of an accountant or any other party in interest, may appoint an auditor or master.

(b) The petition shall recite why the appointment is sought and what issues the auditor or master is likely to be called upon to resolve.

Comment

The purposes of auditors, masters, and of certain other Orphans' Court Division officers may be found at 20 Pa.C.S. §751.

Rule 8.0B Oath

The auditor or master, before undertaking appointive duties,

shall take an oath before the Clerk to faithfully perform such duties.

Rule 8.1A Notice of Hearings

(a) The auditor or master shall fix a date, time and place for hearing and shall give written notice to the accountant or petitioner and all parties in interest or their counsel of record of the hearing by first class mail at least twenty (20) days prior thereto. In the event notice cannot be given in such manner, notice shall be given by advertisement one time in the Armstrong County Legal Journal and one time in a newspaper of general circulation in the county where the decedent resided. The date of publication shall be at least twenty (20) days prior to the hearing.

(b) the notice shall include the following:

- (i) the caption and number of the case;
- (ii) the fact and date of appointment;
- (iii) the name of the fiduciary of the estate
- (iv) the time and place of hearing;
- (v) a general statement of the matters to be determined; and
- (vi) the signature and the typewritten name, address and telephone number of the auditor or master.

Rule 8.1B Conduct of Hearings

(a) All hearings before an auditor or master shall be conducted in accordance with the Pennsylvania Rules of Evidence.

(b) The hearings may be continued or adjourned from time to time by the auditor or master for cause shown or upon agreement of all parties present, but each continuance or adjournment shall be to a day certain not more than thirty days distant.

(c) Auditors and masters shall have the authority to administer oaths to witnesses.

(d) Auditors and masters shall have the authority to issue subpoenas, including subpoenas duces tecum.

(e) With leave of court, the auditor or master may retain experts as an aid in the performance of appointed duties. Leave may be obtained by motion presented in Motions Court pursuant to the Local Rules of Civil Procedure. All parties in interest shall receive notice of the presentation of such a motion.

(f) An official court reporter shall take all the testimony and thereafter transcribe the same.

Rule 8.3A Form of Auditor's Report

(a) In addition to the requirements of Pa.O.C. Rule 8.3, an auditor's report shall include a statement of proposed distribution and shall have attached a proposed decree which confirms the report and states in detail the distribution proposed by the auditor.

(b) The auditor's report and proposed statement of distribution shall provide for the payment of the auditor's fees and expenses, imposing them upon one or more parties in such manner as is equitable.

(c) The auditor's report shall state the manner of service of notice of the hearing.

Rule 8.6A Notice of Filing of Report

(a) An auditor or master shall timely file the report with the Clerk and simultaneously serve notice thereof upon the accountant, all parties who appeared at the hearing, and all parties who received notice of the hearing other than by publication. The notice shall be given by first class mail. A copy of the report shall be attached to the notice. Proof of service of the notice shall be filed immediately after mailing of the same. A copy of the notice shall be attached to the proof.

(b) The notice of the filing of the report shall be substantially in the form prescribed by Appendix S of these Local Rules. The notice shall state that exceptions thereto must be filed within ten (10) days of the date of filing of the report or the report may be confirmed in the case of an auditor or its recommendation adopted in the case of a master.

Rule 8.7A Confirmation of Auditor's Report

Unless exceptions to an auditor's report are timely filed,

the report will be confirmed by the Court. The Clerk shall transmit the report as of course so it may be so confirmed.

Rule 8.7B Confirmation of Master's Report

Unless exceptions to a master's report are timely filed, the Court will adopt its recommendations. The Clerk shall transmit the report to the Court as of course so its recommendations may be so adopted.

OFFICIAL EXAMINERS

Rule 9.1A Appointment. Petition

(a) The Court, on its own motion, or upon petition of an auditor or any other party in interest, may appoint an official examiner.

(b) The petition shall recite why the appointment is sought.

Comment

The purpose of official examiners and of certain other Orphans' Court Division officers may be found at 20 Pa.C.S. §751.

Rule 9.1B Order to Appear for Examination. Service. Attachment of Person for Failure to Appear. Civil Contempt

(a) An official examiner may order any person in custody or control of estate or trust assets to appear before him for examination. The order may include a directive to bring papers, other information, or the assets themselves, in an appropriate case. The official examiner shall cause the order to be personally served upon the person by a competent adult. An affidavit of service shall be promptly filed by the person making such service.

(b) If the person directed to appear before the official examiner fails to appear despite proper service, the official examiner may petition the Court for an attachment of the person. The official examiner may file a petition seeking an adjudication of civil contempt. The Court will direct the manner of service of the contempt petition by special order. Notice of the presentation of either kind of petition is required.

Rule 9.1C Compensation

The compensation of the official examiner shall be paid from the estate fund. The amount of such compensation shall be fixed by special order of court.

REGISTER OF WILLS

Rule 10.1A Filing of Inventory with Register of Wills

The inventory filing requirement set forth in 20 Pa.C.S. §3301 will be deemed to have been satisfied by the filing of a Pennsylvania Inheritance Tax return with the Register. If the decedent owned real estate outside the Commonwealth at the time of his death, a memorandum describing the real estate shall be attached to the return.

Comment

20 Pa.C.S. §3301 requires the personal representative of an estate to file an inventory with the Register of Wills.

Rule 10.2A Appeals from the Register of Wills. Petition. Contests. Citation. Service. Procedure

(a) Appeals from a judicial act or decision of the Register of Wills shall be by petition directed to the Court.

(b) The petition shall bear the proper caption and shall be in paragraph form, stating the nature of the proceedings before the Register; the basis for the appeal, including the relevant facts which the petition relies upon; the names and addresses of all parties in interest, including those who are not a party to the record; and a prayer for appeal.

(c) When a petition for appeal has been filed with the Court, the Register of Wills shall cause the record to be certified to the Court and properly docketed in the Orphans' Court Division dockets.

(d) After the record has been certified and docketed as required in subparagraph (c) of this rule, the Court will award a citation directed to all parties in interest.

SPECIAL PETITIONS

FAMILY EXEMPTION

Rule 12.1A Family Exemption. Petition. Procedure

In the event a petition is filed because the fiduciary has disallowed a claim for a family exemption, the matter shall proceed under Rule 3.5A of these rules.

Rule 12.1B Personal Property. Appraisement

When personal property is claimed as the family exemption and an appraisement is necessary, it shall be done in such manner as the Court may direct by special order in each case. The petition seeking such special order shall have a proposed special order attached thereto.

Rule 12.1C Real Property. Appraisement

When real property is claimed as the family exemption, an appraisement shall be done in accordance with 20 Pa.C.S. §3123.

Rule 12.1D Return of Appraisement. Notice of Filing

The order of appointment shall fix the date upon which the written appraisement shall be filed with the Clerk by the appraisers. The appraisement shall describe the property, specify the value, and specify the liens and encumbrances upon the property. The appraisers shall timely file their appraisement with the Clerk and simultaneously serve notice thereof to all parties in interest who have been served with the petition other than by publication. The notice shall state the date of filing of the appraisement, the fact that the appraisement will be confirmed by the Court unless written exceptions are timely filed with the Clerk. The notice shall be served by first class mail, and the appraisers shall attach a copy of the appraisement to the notice. A proof of service of notice shall be filed and a copy of the notice shall be attached thereto.

Rule 12.1E Employment of Counsel by Appraisers

The appraisers shall hire a lawyer to aid them in the preparation and filing of their appraisement, and in giving the required notice of the filing thereof.

Rule 12.1F Appraisers Compensation and Expenses

In addition to the requirements set forth in Rule 12.1D of these rules concerning contents of the appraisal, the appraisal shall have attached thereto a statement of the appraisers fees and expenses. An order of confirmation shall direct payment of the same by the personal representative.

Rule 12.1G Confirmation of Appraisal

Unless exceptions to an appraisal are timely filed, the appraisal will be confirmed by the Court. The Clerk shall transmit the appraisal as of course so it may be confirmed.

Rule 12.1H Hearing or Argument

Any exceptant or other party in interest may move the Court to schedule a hearing, an argument, or both, upon the exceptions, in the event the Court has not done so on its own. Notice of the presentation of such motion is not required.

ALLOWANCE TO SURVIVING SPOUSE OF INTESTATE

**Rule 12.2A Allowance to Surviving Spouse of Intestate.
Appraisal**

The manner of appraising the property, of filing and confirming the appraisal, and of giving notice thereof shall be as prescribed by Rule 12.1A through 12.1H of these rules, pertaining to claim for family exemption.

**EXTENSION OF TIME FOR FILING OF
SURVIVING SPOUSE'S ELECTION**

Rule 12.3A Petition for Extension of Time to File Election

A surviving spouse who seeks an extension of time to file an election under 20 Pa.C.S. Chapter 22 shall proceed under Rule 3.5A of these rules.

**APPOINTMENT OF A GUARDIAN FOR THE ESTATE OR
PERSON OF A MINOR**

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

(a) A hearing shall be held upon every petition filed for the appointment of a guardian of the person or the estate of a minor, even if the consents of all parties in interest are attached and even if no objection to the petition is filed by any party in interest.

(b) In lieu of the notice requirements of Rule 1.2E of these rules, the notice shall be substantially in the form prescribed by Appendix T of these Local Rules. The notice shall be served by the petitioner upon the minor if at least twelve (12) years of age, upon all parties in interest, including non-custodial parents, and upon any adult who actually has physical custody of the minor, even if their consents are attached to the petition. A copy of the petition shall be attached to the notice. A proof of service of the notice shall be filed. The notice shall be served at least twenty (20) days in advance of the hearing.

(c) The proposed guardian or co-guardians shall appear at the hearing. The minor shall appear at the hearing if he is at least 14 years of age.

(d) All bonds shall be filed with the Clerk within thirty (30) days of the date of appointment. Failure to file the bond may be deemed to be a refusal of the appointment.

Comment

An alternative to the appointment of a guardian of the estate may be the establishment of a sequestered deposit under 20 Pa.C.S. §5103.

20 Pa.C.S. §5101 authorizes the Court to permit the distribution directly to a minor of up to \$25,000 by a decedent's estate or trust.

PARTITION

Rule 12.8A Partition. Procedure

If the Court determines that there shall be a partition of real estate which can be divided without prejudice to or spoiling the whole, the Court shall enter an order directing partition, which shall set forth the names of all the co-tenants and the

nature and extent of their interests in the realty. Further proceedings shall be in conformity with the Pennsylvania Rules of Civil Procedure pertaining to partition actions. All filings shall be with the Clerk.

Comment

20 Pa.C.S. §3534 concerns distribution of assets in kind; it authorizes a court to partition real property in certain circumstances or to direct its sale, in others.

PUBLIC SALE OF REAL PROPERTY

Rule 12.9A Public Sale of Real Property

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

(b) The notice shall bear the caption of the estate and shall contain:

- (i) the address of the property and the municipality in which it is located;
- (ii) the area of the property in terms of acres or square feet;
- (iii) a list of the improvements on the property;
- (iv) a deed or survey description of the property, if one is available;
- (v) the name of the grantee of the last recorded deed for the property, together with the deed or record book volume and page; and
- (vi) the liens and encumbrances thereon, including the identity of the lienholders and encumbrance holders.

Comment

For the power of personal representatives of an estate to sell real property, see 20 Pa.C.S. Chapter 33, Subchapter C. For the power of a guardian of a minor to sell real property, see 20 Pa.C.S. Chapter 51, Subchapter F. For the power of a guardian of the estate of an incapacitated person to sell real property, see 20 Pa.C.S. Chapter 55, Subchapter D.

INALIENABLE PROPERTY

Rule 12.12A Inalienable Property

After the filing of a petition to sell, mortgage, lease or exchange inalienable property pursuant to 42 Pa.C.S. Chapter 83, the matter shall proceed under Rule 3.5A of these rules.

CLAIMS OF MINORS AND INCAPACITATED PERSONS

Rule 12.16 Compromise, Settlement, Discontinuance. Distribution. Petition. Contents.

(a) Every petition for approval by the Court of a proposed compromise, settlement or discontinuance of an action for injury to the person of a minor shall contain a description of the injury, a brief account of the circumstances under which it was sustained, a statement of the nature of the evidence relied on to establish liability, any limits on the defendant's financial responsibility, a list of the expenses incurred, the fees of counsel, and arrangements for payment of unpaid bills. The petition shall be accompanied by a written report of the attending physician stating the extent of the injury, the treatment given and the prognosis for the injured party.

(b) The minor shall be present in Court at the time of the presentation of the petition unless excused by the Court for cause shown.

(c) If the petition is not joined in or consented to by both parents or co-guardians, its presentation shall be in accordance with L.R.C.P. 208.3(a) pertaining to Motions Procedure. Notice of such presentation shall be given in accordance therewith to the non-joining or non-consenting parent or co-guardian. If the whereabouts of such person are unknown, the petition shall so state.

Comment

The Petition will preferably be presented at a duly scheduled session of Motions Court.
Adopted April 28, 2008, effective June 17, 2008

Rule 12.16A Claims of Minors and Incapacitated Persons

(a) A petition filed under this rule shall contain the same information prescribed by the Local Rules of Civil Procedure governing such petitions filed in civil actions.

(b) Petitions for approval by the court of a proposed compromise, settlement, or discontinuance of a cause of action for injury to the person of a minor or to an incapacitated person shall be governed by Rule 1.2D and Rule 3.5F(a)(1) of these Rules.

(c) If no party in interest answers or objects to such a petition for approval involving a minor, the minor shall be present in Court at the time the record is transmitted to the Court upon praecipe filed pursuant to Rule 3.5F(a)(i) of these Rules. The praecipe shall be filed immediately before commencement of a duly scheduled session of Motions Court.
Adopted October 28, 2003, effective December 22, 2003.

Comment

Upon subsection (c) of this rule, the Motions Judge will review the record, see the minor and act upon the petition.

DISTRIBUTION - SPECIAL SITUATIONS

Rule 13.3A Report by Fiduciary. Distributee Whose Identity or Whereabouts Are Unknown

(a) When the existence, identity or whereabouts of a distributee is unknown, the report shall be contained within the body of a petition seeking approval to withhold or to make an award other than to the distributee. Notice of the filing of the petition shall be given as directed by special order of Court.

(b) The report shall set forth the nature of the investigation made to locate the distributee, in complete detail, and, in cases of intestacy, a family tree as complete as possible, supported by such documentary evidence as the fiduciary has been able to obtain. An investigation shall include, when appropriate, inquiries of relatives, friends and neighbors; residents of the household in which the decedent resided; labor unions; places of employment; social, fraternal or beneficial

organizations; insurance companies; churches; schools; the Social

Security Administration; the Veterans' Administration; and such other possible sources of information as circumstances may suggest, including naturalization records.

GUARDIANSHIP OF INCAPACITATED PERSONS

Rule 14.1A Service of Notice of Filing of Petition and Hearing. Proof of Service

(a) Notice of the petition for appointment of guardian and hearing shall be served by the petitioner upon those persons entitled thereto under 20 Pa.C.S. §5511(a). A copy of the petition shall be attached to the notice. Service of the notice shall be given at least ten (10) days in advance of the hearing. The notice shall be substantially in the form prescribed by Appendix U of these Local Rules.

(b) Proof of service of the notice shall be presented to the Court at time of hearing.

(c) The petition shall have attached thereto a preliminary order of Court in the form prescribed by Appendix V of these Local Rules.

Rule 14.1B Appointment of Counsel. Application

The petitioner shall notify the Court at least seven (7) days prior to the final hearing upon the petition if counsel has not been retained by or on behalf of the alleged incapacitated person. Such notification shall consist of an application alleging the same and requesting the appointment of an attorney. Notice in advance of the presentation of such application is not required.

Rule 14.1C Independent Evaluation

A petition filed by an alleged incapacitated person seeking an order for an independent evaluation shall be presented to the Court in Motions Court pursuant to the Local Rules of Civil Procedure, after appropriate notice is given to the counsel for the petitioner, or, if unrepresented, to petitioner.

Rule 14.1D Emergency Guardian

(a) A separate petition for appointment of an emergency guardian shall be filed.

(b) After a petition for the appointment of an emergency

guardian has been filed, the matter shall proceed on citation and hearing. The provisions of 20 Pa.C.S. §5511, including those relating to counsel, shall be applicable, except when the Court has found that such provisions are not feasible under the circumstances. If a petitioner believes that one or more provisions of 20 Pa.C.S. §5511 are not feasible under the circumstances, the petitioner shall state the factual basis for the same, and the Court may, in its discretion, dispense with compliance in the order awarding the citation. If not all required provisions have been complied with by the time of the hearing upon the petition, the Court may, in its discretion at the hearing, further dispense with compliance, if compliance is shown to have been unfeasible.

(c) The petition shall have attached to it a preliminary order of court (emergency guardian) in form prescribed by Appendix W of these Local Rules.

(d) The citation issued in connection with a petition for appointment of emergency guardian shall be modeled after the citation prescribed by Pa.O.C. Rule 14.5, with appropriate changes. A proposed citation shall be presented to the Court for review at the time the petition is presented.

Rule 14.1E Telephone Testimony

If all parties or their attorneys of record agree, the Court will receive the testimony of a physician or other expert witness by telephone. In the event there is no such agreement, the Court will nonetheless consider permitting the same upon motion of any party presented at Motions Court in accordance with the Local Rules of Civil Procedure.

Rule 14.1F Order of Appointment Not in Form of Decree Nisi

An order appointing a guardian for an incapacitated person shall be in the form of a final order and not a decree nisi.

Rule 14.1G Annual Guardianship Reports.

The annual reports required by 20 Pa.C.S. §5521(c) shall be in such form as prescribed by the Pennsylvania Orphans' Court Rules: Form G-02 - Annual Report of the Guardian of the Estate; Form G-03 - Annual Report of the Guardian of the Person. The Guardian, as an alternative, may utilize the form prescribed by the Department of Veteran's Affairs - Federal Fiduciary's Account, VA Form 21-4706(b) November 2002, or any amendments thereof.

Amended April 29, 2008, effective June 17, 2008

Rule 14.1H Testamentary Writings

All testamentary writings of the incapacitated person, even those apparently revoked by subsequent instruments, shall, at the time of the filing of the inventory, be filed with the Clerk, to be kept under seal and not to be opened without order of court. The Clerk shall not transcribe, photocopy, microfilm or otherwise duplicate the writings, but shall merely docket their receipt; provided, however, that the Clerk shall provide the appointing judge with a photocopy of the same for retention in the judge's private file.

ADOPTION

Rule 15.1A Filing

(a) All papers in adoption matters, including petitions for voluntary and involuntary termination, shall be filed with the Clerk. Every petition shall have a proposed order fixing a hearing date attached thereto. Notice regarding adoption-related petitions shall be given in accordance with statute.

(b) Petitioners seeking more than one involuntary or voluntary termination or more than one adoption must file separate petitions for each child involved. A filing fee is payable for each such petition.

Amended April 29, 2008, effective June 17, 2008

Rule 15.1B Orders Not in Form of Decrees Nisi

An order terminating parental rights and an order decreeing an adoption shall each be in the form of a final order and not a decree nisi.

Comment

Pa.O.C. Rule 7.1(e) does not permit the filing of an exception to any order in involuntary termination or adoption matters under the Adoption Act.

Rule 15.4A Involuntary Termination of Parental Rights. Form of Notice

(a) The notice required by 23 Pa.C.S. §2513(b) shall state the following in italics, which will be in addition to the language explicitly called for by said statute:

Should you appear and indicate that you intend to oppose the termination of your rights, the time will be used as a pre-trial conference and a new hearing date

will be set.

(b) The notice required by 23 Pa.C.S. §3513(b) shall designate the "Prothonotary of Armstrong County, Room 103, Armstrong County Courthouse, Kittanning, PA 16201 (telephone: 724-543-2500)" as the person from whom information can be obtained about legal help.

Comment

The Local Rules of Civil Procedure designate the Prothonotary as the person from whom information can be obtained about legal help. This rule makes the Prothonotary the source of similar information in orphans' court matters, as well.
Adopted August 13, 2010, effective November 1, 2010

Rule 15.5A Adoption. Disclosure of Fees and Costs

At the hearing upon the petition for adoption, there shall be offered in evidence a report, certified by counsel for the petitioner, setting forth the amount of fees, costs and expenses paid or to be paid to counsel, and any other fees, costs and expense paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

Comment

This rule mirrors the requirements of Pa.O.C. Rule 15.5(d).

TITLE OF RULES

Rules 17.1A

These rules shall be known as the Local Orphans' Court Rules and shall be cited as "L.O.C. Rule ____."

MISCELLANEOUS

Rule 18.1A Notice by Clerk of Entry of Order, Decree, Etc.

(a) The Clerk shall immediately give written notice by regular mail of the entry of any order, decree, judgment, memorandum or opinion to the lawyer for the petitioner or accountant, or, if unrepresented, to the petitioner or accountant directly, and to all other parties in interest who have entered an appearance.

(b) Service by the Clerk of a copy of the document itself shall be sufficient notice of its entry if the front page of the copy bears the date and time of its entry.

Comment

Rule 1.2C of these rules requires that the name and address of each party in interest be set forth in the body of any petition filed with the Clerk. The proof of service of the notice of the filing of an account or petition will set forth similar information. See Rule 5.4A of these rules. The proof of service of a citation will set forth the same information. See Rule 3.5B and Rule 3.5C of these rules.