

# **LOCAL RULES**

of the

## **COURT OF COMMON PLEAS OF MERCER COUNTY, 35<sup>th</sup> JUDICIAL DISTRICT**

(updated September 2014)

Supplementing the

### **Orphans' Court Rules**

Promulgated by the

### **Supreme Court of Pennsylvania**

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## **RULE 1. JUDGES -- LOCAL RULES**

### **Local Rule 1.2:1 Argument Court.**

- a. **Time** -- Argument Court shall be held on the first Monday of each month unless otherwise specially ordered by the Court in any particular case.
- b. **Listing and Notice thereof** -- All cases for argument shall be placed on the Argument List at least thirty (30) days prior to the argument by praecipe to the Clerk. A copy of the praecipe ordering the case on the Argument List shall be sent to the opposing counsel and to the Court Administrator by the party placing the case on the Argument List, which praecipe shall include the name of the opposing counsel and whether the matter listed requires the taking of testimony.
- c. **Scheduling** -- The Court Administrator shall give notice to all counsel that the case has been placed on the Argument List and said notice shall contain the date upon which argument will be held. The Argument List shall also be published in the Mercer County Law Journal prior to argument.
- d. **Briefs** -- At least fifteen (15) days before the date of Argument Court, it shall be the duty of counsel for the rule or motion, or petitioner, exceptant or party filing preliminary objections, or who has the affirmative, to serve on adverse counsel a typewritten brief on paper 8 ½ inches by 11 inches in size, double spaced, except for quotations containing a concise statement of the relevant facts, the questions involved, the argument, and the authorities relied upon. Counsel for the adverse party may prepare a brief which need only contain an argument and authorities relied upon, but counsel may add a counter statement of the facts, and a counter statement of the questions involved. Unless counsel does so, however, it will be assumed counsel is satisfied with them or such parts of them as remained unchallenged. At least five (5) days before Argument Court, counsel shall serve a copy of the reply brief upon opposing counsel, and copies of both briefs shall be delivered to the Court Administrator at least five (5) days before Argument Court. If either party fails to file a brief in accordance with these Local Rules, the Court shall dispose of the argument without brief.

### **Local Rule 1.2:2 Attorneys.**

The Local Rules of Civil Procedure of the Court of Common Pleas of Mercer County relating to the admission and conduct of attorneys are adopted as the Rules for the Orphans' Court Division of this County.

### **Local Rule 1.2:3 Costs.**

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

### **Local Rule 1.2:4 Acknowledgement and Satisfaction.**

Acknowledgement of satisfaction of all sums of money or property ordered to be paid or delivered by any award or decree of this Court shall be in writing and filed with the Clerk, or acknowledged in such other manner as the Court may require.

### **Local Rule 1.2:5 Petitions to Enforce Compliance.**

Any party in interest may petition the Court for an order to enforce compliance with the provisions of a decree or an adjudication. A copy of such order shall be served upon the respondent personally no less than ten (10) days before the date designated therein for payment or delivery. If a party fails to comply with the order, the other party may petition the Court for an appropriate writ to enforce compliance therewith.

### **Local Rule 1.2:6 Certificates of Fiduciary Appointment.**

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

### **Local Rule 1.2:7 Witnesses. Attachment.**

Attachment to compel the appearance of a witness will not be issued, except under special circumstances, and unless the witness shall have been served with a subpoena at least twenty-four (24) hours before the date for hearing.

### **Local Rule 1.2:8 Individual Sureties.**

- a. **Application for Approval. Justification for Surety** -- Except as otherwise provided by paragraph (b) of this Local Rule, an application for the approval of an individual surety shall be accompanied by a justification of surety, in affidavit form, of the proposed surety, setting forth:
  1. name, residence address;
  2. location of the real property owned;
  3. a brief description of the real estate and what it consists of;
  4. how, or from whom, the real estate was obtained and when obtained;
  5. that the surety or sureties do not contemplate selling of said property;
  6. any encumbrance upon the real property;
  7. the assessed value of the property for taxation purposes;
  8. a certification of the value of the said property.

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

### **Local Rule 1.2:9 Corporate Sureties.**

- a. **In General** -- Surety companies duly authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in Court.
- b. **Exceptions** -- except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

### **Local Rule 1.2:10 Assets and Investments.**

- a. **Segregation and Designation of Assets** -- Assets held by individual fiduciaries subject to the jurisdiction of the Court shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such .
- b. **Deposit of Uninvested Funds** -- All funds held uninvested shall be deposited in a bank or banks, or trust company or trust companies, the deposits of which are insured by the Federal Deposit Insurance Corporation in such manner as to obtain the maximum deposit insurance coverage.

### **Local Rule 1.2:11 Court Depository.**

- a. **Official Depository** -- The Court will, from time to time, designate a banking institution as the official depository of the Court.
- b. **Deposits** -- Moneys and securities paid or delivered into the Court shall immediately, upon the receipt thereof by the Clerk, be deposited with the Court depository or to the credit of the proper estate or proceeding. The depository shall keep separate accounts for each payment and delivery and designate each by name of the proper estate or proceedings.
- c. **Withdrawal Orders** -- No money shall be paid or delivered by such depository except upon the check or order of the Clerk, countersigned by a Judge of the Court, and accompanied by a certificate endorsed on the check or order, under the hand of the Clerk and the seal of the Court, that the money or property was ordered to be paid or delivered.

- d. **Accounting by Clerk** -- Each year, or at such other times as the Court may direct, the Clerk shall have the bank or deposit book settled by the depository and shall make and present to the Court an account of the moneys paid into and out of the account, and shall exhibit the deposit book as a voucher for the correctness thereof.

### **Local Rule 1.2:12 Accounts.**

The accounts of fiduciaries shall be presented to Court for nisi confirmation at the date and time set for confirmation of accounts by the Court as set forth in the Annual Court Calendar, unless otherwise directed by the Court.

### **Local Rule 1.3 Termination of Inactive Cases**

During the month of April of each year, the Clerk of the Orphans' Court shall determine in which matters not concluded there has been no activity during the previous two years. The Clerk of the Orphans' Court shall then give notice in each such matter as provided by Pa. R.J.A. 1901(c). If no action is taken, or no written objection stating good cause is filed in such matter within 30 days, the Clerk of the Orphans' Court shall enter an order terminating the matter. If written objection is filed in such matter within 30 days, the Clerk of the Orphans' Court shall list the matter for the next available Argument List without further praecipe and give notice to all parties. Failure of the objector to appear and to show good cause may result in the dismissal of the action.

Where publication is required, such publication shall be twice printed in the Mercer County Law Journal.

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

### **Local Rule 2.3:1 Definitions.**

In addition to those words and phrases defined by the Supreme Court Rules, the following words and phrases when used in these Local Rules unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Local Rule:

"Affidavit" means a written statement made under oath or equivalent affirmation



"Hearing Judge" means that Judge to whom a motion, petition or other pleading is presented.

"Supreme Court Rules" means the Supreme Court Orphans' Court Rules.

"Verify," "verification," or "verified statement" means an unsworn written statement made under penalty of perjury.

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

#### **Local Rule 3.1:1 Notice to Defend or Plead.**

Where a notice to defend or to plead has been endorsed on a pleading, the pleadings and practice shall conform with the pleading and practice in equity insofar as the requirement of responsive pleading.

#### **Local Rule 3.1:2 Hearings:**

Petitions and motions shall have attached thereto a proposed order of Court, which shall be prepared by the party presenting the petition or motion, and which shall include a date and time for a hearing and for the taking of testimony, if necessary.

#### **Local Rule 3.1:3 Hearing Judge.**

When a proceeding on a particular estate or matter has been previously heard by a Hearing Judge, all subsequent proceedings pertaining to the same estate or matter, whenever possible shall be presented to the same Hearing Judge.

## **RULE 6. ACCOUNTS AND DISTRIBUTIONS**

### **Local Rule 6.1(e): 1 Form of Accounts. Additional Requirements.**

Each account:

1. Shall itemize the assets of which the balance is composed;
2. Shall be accompanied with a statement of proposed distribution, or a request that distribution be determined by an auditor;
3. Shall be accompanied by a certificate of the attorney for the accountant that to the best of knowledge, information, and belief, the debits and credits and any statement of proposed distribution filed therewith are correct and proper and that any required legal advertisement has been duly published;
4. Shall be accompanied by an affidavit or verification of at least one accountant that the account is true and correct to the best of knowledge, information, and belief, and that all notices required by law or Rules of Court have been served upon all parties in interest; and
5. Shall be accompanied by a proposed decree of nisi confirmation and a proposed decree of confirmation absolute.

### **Local Rule 6.1(f): 1 Approved Forms.**

The Register and Clerk shall provide printed forms designed in accordance with these Local Rules. An accountant shall use either these printed forms together with such additional pages as shall be necessary, or a typed account similar in form.

### **Local Rule 6.3:1 Contents of Notice. Additional Requirements.**

The notice to parties in interest shall set forth:

1. the date on which the account will be presented to the Court for nisi confirmation, and that the account will be confirmed absolutely unless objections are filed within ten (10) days thereafter;
2. whether the claim, interest or objection of the person notified is admitted or contested, and if admitted, whether it will be paid in full or in part; and
3. the accountant's interpretation of any dispute or fairly disputable question, known to or reasonably ascertainable by the accountant.

### **Local Rule 6.3:2 Advertisement of Accounts.**

All accounts required by law to be filed with the Register or with the Clerk shall be advertised by the Register or Clerk in the manner prescribed by law and shall also state that unless objections are filed within ten (10) days after nisi confirmation, the account will be confirmed absolutely and that thereafter distribution may be decreed by the Court, without reference to an auditor, in accordance with any statement of proposed distribution filed with the account.

### **Local Rule 6.9(a):1 Form of Statement of Proposed Distribution.**

The statement of proposed distribution, if any, shall accompany the account as provided in Local Rule 6.1(e):1, and shall specify the names of the person or persons to whom the balance available for distribution is awarded, the exact amount of share awarded to such person or persons, and whether the proposed distribution is in cash or in kind.

### **Local Rule 6.9(b):1 Notice and Advertisement.**

Notice and advertisement of a statement of proposed distribution shall be given at the same time and in the same manner as the account as provided in Local Rules 6.3:1 and 6.3:2.

### **Local Rule 6.10:1 Objections.**

Objections to an account or statement of proposed distribution shall be filed with the Clerk within ten (10) days after nisi confirmation. In the event objections are filed prior to nisi confirmation, they shall be considered as objections to the decree nisi.

### **Local Rule 6.11.1 Confirmation Absolute.**

- a. Unless objections are filed in accordance with Local Rule 6.10:1, the confirmation of accounts and statements of proposed distribution filed with accounts shall be made absolute by the Clerk, without further order of Court, provided that an affidavit or verification is filed showing that notice has been given in compliance with Local Rule 6.3:1. The confirmation of the account and any statement of proposed distribution filed with the account shall be placed upon the record and the account by the Register and Clerk.

- b. No account, or statement of proposed distribution filed with any account, shall be considered finally confirmed except by written confirmation by the Clerk as hereinbefore provided or by order of Court; and such final confirmation, if relating to a statement of proposed distribution filed with any account, shall expressly state that it is a final confirmation of the account and the statement of proposed distribution filed therewith.

### **Local Rule 6.11.2 Confirmation of Title to Real Property.**

- a. **In General**-- When the account and the statement of proposed distribution filed therewith have been finally confirmed as hereinbefore provided. such confirmation shall be in the nature of confirmation of title to real property in the respective distributees.
- b. **Separate Awards** -- A schedule of distribution shall set forth separate awards of real property in separate paragraphs.
- c. **Description** -- Real property shall be described in the manner appearing in the last deed of record, or in some other proper manner, and in addition, shall include information pertinent to the derivation of title.
- d. **Certification by Clerk**-- The Clerk may, at the request of any party in interest, certify excerpts from a decree of distribution for recording in any public office for recording deeds.

### **Local Rule 6.11.3 Distribution without Audit.**

After final confirmation of the account, the Court, on motion or petition, may decide that the matter does not call for reference to an auditor and may decree distribution substantially in conformance with the statement of proposed distribution filed with the account, provided such motion or petition is accompanied by:

1. an affidavit or verification of the accountant that there are no unpaid debts or taxes, and that all beneficiaries have received notice of the statement of proposed distribution;
2. an affidavit or verification by the accountant or one of the next of kin or beneficiaries stating the names and addresses of all the beneficiaries, and that they are all sui juris., or if not, the names and addresses of their fiduciaries;
3. a statement by the attorney for the accountant that the schedule of distribution is correct and in accordance with law; and
4. a proposed decree of distribution.

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

### **Local Rule 8.1:1 Notice of Hearings.**

- a. **Original Hearing** -- Ten (10) days notice of the time and place of the first hearing before the auditor or master shall be served in writing on all known heirs, devisees, unpaid legatees, and distributees, or their attorneys resident within the county, and to all others by advertisement in one (1) newspaper of general circulation within the county and the Mercer County Law Journal once a week for three (3) consecutive weeks prior to the day of the hearing, unless notice be dispensed with by agreement of all parties in interest, or by order of Court. Auditors and masters shall state in their report the manner and to whom notice was given.
- b. **Subsequent Hearings** -- Notice of succeeding hearings given by the auditor or master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

### **Local Rule 8.6:1 Notice of Filing Report. Preliminary Exceptions.**

After the report is prepared, the auditor or master shall serve on the parties, or their attorneys, ten (10) days written notice of the day fixed for filing the same and in the meantime, such parties shall be allowed access thereto. Any party interested may file preliminary exceptions to the report, before the day fixed for the filing thereof. If preliminary exceptions are filed, the auditor or master shall reexamine the report and amend the report if the preliminary exceptions are, in whole or in part, well founded. If the report is not filed at the time fixed therefore in the said notice, said report shall only be filed after five (5) days written notice is given to the parties, or their attorneys. The auditor or master shall certify in the report the manner and time of serving the notice herein required.

### **Local Rule 8.7:1 Approval of Expenses and Fees prior to Confirmation.**

No auditor's or master's report shall be confirmed nisi or otherwise approved until such time as the Court shall have entered an order approving the amount of expenses to be reimbursed unto and the amount of fees to be awarded unto the auditor or master. The Court may assess said expenses and fees upon any party in interest, as it deems fit.

### **Local Rule 8.7.2 Confirmation of Auditor's Reports. Exceptions.**

All reports of auditors shall be filed in open Court at the time and date set by the auditor, pursuant to these Rules. Upon the filing of the report, it shall be confirmed nisi, which confirmation shall be made absolute by the Clerk without further order of Court, unless exceptions thereto are filed.

### **Local Rule 8.7.3 Confirmation of Master's Reports. Exceptions.**

All reports of masters shall be filed in open Court at the time and date set by the master pursuant to these Rules. Upon the filing of the report, the Court shall enter a decree nisi either adopting the master's recommendations or rejecting the same. A decree nisi shall be made final by the Clerk without further order of Court, unless exceptions thereto are filed.

### **Local Rule 8.8:1 Absolute Confirmation. Auditor's and Master's Expenses and fees.**

No nisi confirmation or decree nisi shall be confirmed absolutely by the Clerk until all expenses and auditor's or master's fees have been paid to the Clerk. Upon absolute confirmation, the Clerk shall pay all expenses and the balance of the auditor's or master's fee to the auditor or master, after deducting ten (10%) percent of the auditor's or master's fee to be paid to the treasurer of the Mercer County Bar Association.

## **RULE 9. OFFICIAL EXAMINERS**

### **Local Rule 9.1:1 Appointment and Duties of Official Examiners.**

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

## **Local Rule 9.1:2 Compensation of Official Examiners**

- a. **In General** -- Each estate or trust shall be liable for the compensation of the examiner based upon a schedule of fees fixed by the Court. In special circumstances, the compensation of the examiner will be fixed by special order of the Court.
- b. **Charitable Trusts** -- Each charitable estate or trust shall be liable for the compensation of the examiner in such amount as the Court shall specifically fix in each case.

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

### **Local Rule 10.2:1 Notice of Appeal.**

Any person desiring to appeal from a judicial act or decision of the Register shall file a written notice thereof with the Register, specifying generally the act or decision complained of, accompanied by an affidavit or verification that said appeal is not taken for delay but because appellant believes that injustice results from the act or decision which is appealed .

### **Local Rule 10.2:2 Petition for Appeal.**

Within thirty (30) days from the filing of the notice of appeal, the appellant shall present a petition to the Court which shall set forth:

1. the nature of the proceedings before the Register;
2. a copy of any will in controversy;
3. a statement of the facts and circumstances relied upon;
4. a precise statement of the questions of law or of fact involved;
5. the filing and approval by the Register of the security required by law; and
6. the names and addresses of all parties in interest.

### **Local Rule 10.2:3 Certification and Citation.**

- a. If the averments of the petition for appeal appear to be prima facie sufficient, the Court shall award a citation and, if it has not been done by the Register on his/her own motion, order certification of the entire record of the Register to the Court.

The citation shall be directed to all parties in interest and shall require them to file a complete answer under oath or verification to the averments of the petition, on or before a day certain which shall not be less than ten (10) days after the service thereof, and to show cause as the decree of the Court shall provide.

- b. Proof of service of the citation shall be filed with the Register on or before the return date of the citation.
- c. The Court may issue a citation and direct that the Register certify to the Court the record, without regard to whether or not testimony has been taken before the Register.

#### **Local Rule 10.2:4 Argument List and Hearing.**

After the return date of the citation, any party may place the matter on the Argument List for the purpose of fixing a time for taking any testimony required to support the issue or for the argument of any legal issue raised by the pleadings. After the testimony has been transcribed and filed, any party may place the matter on the Argument List for purpose of argument.

#### **Local Rule 10.2:5 Grant of Jury Trial.**

- a. **Determination by Judge** -- The Hearing Judge shall determine whether a jury trial will be granted upon any issue of fact arising upon the certification or appeal.
- b. **Decree** -- If a jury trial is granted, the decree shall specify the issues to be tried, - which may be agreed upon by the parties, or as the Hearing Judge shall determine.

### **RULE 12. SPECIAL PETITIONS**

#### **Local Rule 12.1.1 Family Exemption. Additional Requirements.**

- a. **Contents of Petition** -- A petition for a family exemption shall also set forth in separate paragraphs:
  - 1. the name, residence and date of death of decedent;
  - 2. the name, address and relationship of the petitioner to the decedent, and whether the petitioner formed a part of decedent's household at the date of his death;
  - 3. if petitioner be the surviving spouse, the date and place of the ceremonial marriage; or, in case of a common-law marriage, all averments necessary to establish the validity of such a marriage;



4. whether the decedent died testate or intestate; where, when, and to whom letters were granted; and if decedent died intestate, the names, relationship and addresses of those interested as next of kin;
  5. the location and valuation of the property claimed;
  6. that ten (10) days prior notice of the filing of the petition has been given to the personal representative, or, when no letters have been granted, to the parties adversely affected; and
  7. a request for appraisers when an appraisal is required.
- b. **Exhibits** -- The following exhibits shall be attached to the petition:
1. a copy of the will;
  2. a copy of the inventory and appraisal showing the valuation of the property claimed, when the exemption is claimed from personal property, and the gross estate exceeds the statutory amount of the family exemption; and
  3. an affidavit or verification of return of notice.

### **Local Rule 12.1.2 Appraisal.**

- a. **When Appraisal Unnecessary** -- Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed:
1. from personal property; or
  2. wholly or in part from real estate, if all parties in interest agree on the valuation.
- b. **Procedure for Appraisal When Required** --
1. Upon petition the Court may appoint two (2) appraisers who shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.
  2. Upon the filing of the appraisal with the Clerk, the appraisers shall also give notice thereof to the personal representative and to the next of kin; and, if there be neither personal representative nor next of kin, to the Attorney General.
  3. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal will be requested and may be allowed by the Court at a stated date, and unless exceptions are filed thereto, the appraisal shall be confirmed absolutely ten (10) days thereafter by the Clerk without further order of Court. Said notice shall be given by the appraisers not less than ten (10) days prior to the date set for nisi confirmation.

### **Local Rule 12.1.3 Voluntary Distribution.**

When the personal representative, at his own risk delivers assets of the estate in satisfaction 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 claimant or party in interest.

### **Local Rule 12.2.1 Allowance to Surviving Spouse of Intestate. Additional Requirements.**

- a. **Contents of Petition** -- A petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:
  1. the information required in a petition for family exemption under Local Rule 12.1(a):1, as far as appropriate; and
  2. that ten (10) days prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.
- b. **Exhibits** -- The following exhibits shall be attached to the petition:
  1. a copy of the inventory and appraisal; and
  2. an affidavit or verification of return of notice.

### **Local Rule 12.2.2 Conclusiveness of Averments.**

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

### **Local Rule 12.2.3 Appraisal. Notice. Practice and Procedure.**

- a. **Filing of Appraisal** -- The appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.
- b. **Notice of Appraisal** - - Upon the filing of the appraisal, notice thereof shall be given to the personal representative, and to the next of kin, and if there be neither personal representative nor the next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal and the setting apart of the real estate to the surviving spouse will be requested and may be allowed by the Court at a stated time, and unless exceptions are filed thereto, confirmed absolutely ten (10) days thereafter. Said notice shall be given not less than ten (10) days prior to the date

- set for nisi confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.
- c. **Confirmation and Setting Apart of Allowance** -- Unless exceptions are filed to the nisi confirmation, the appraisal and award of real estate shall be confirmed absolutely by the Clerk without further order of Court.
  - d. **Exceptions** -- Exceptions to an appraisement shall be filed with the Clerk within ten (10) days after nisi confirmation. Copies of the exceptions shall be served on the fiduciary, if any, and on the spouse or their attorney, within five (5) days after filing. If exceptions are filed, the matter may be placed on the Argument List by praecipe for disposition.
  - e. **Claim for Money** -- If the entire claim is for money, which need not be appraised, claim may be made at or before the audit of the fiduciary's account, provided no payment shall be made to the spouse until it appears that the money claimed is not required for payment of debts.

### **Local Rule 12.3.1 Extension of Time. Contents of Petition.**

A petition for the extension of time in which the surviving spouse may file an election to take against the Will shall set forth:

1. the information required to be set forth in a petition under Supreme Court Rule 12.3(a), paragraphs (1) through (7), inclusive, as far as appropriate; and
2. the facts relied upon to justify an extension of time in which to file the election.

### **Local Rule 12.3.2 Extension of Time. Practice and Procedure.**

The petitioner shall file the petition with the Clerk and thereafter give ten (10) days written notice of intention to request the extension at a stated day to all persons adversely affected thereby who do not join in the prayer of the petition. In the absence of objection, upon the presentation of an affidavit or verification of return of notice on or after said day, an appropriate decree may be entered by the Court.

### **Local Rule 12.4:1 Guardians and Trustees Ad Litem. Appointment and Compensation .**

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

## **Local Rule 12.5.1 Exhibits to Petition.**

The following exhibits shall be attached to the petition:

1. **Consent of Parents or Person in Loco Parentis** -- Written consent of the parents or the surviving parent of the minor to the appointment of a guardian for his estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or of the superintendent or other official in charge of the institution having custody of the minor and, the spouse of the minor if the minor is married. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the petition as the Court may direct .
2. **Consent of Guardian. Individual** -- When the proposed guardian is an individual, the written consent to act as such shall contain the following statements:
  - A. his/her business and domicile;
  - B. that he/she is a citizen of the United States, able to speak, read and write the English language;
  - C. that he/she is not the fiduciary or an officer or employee of the 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 he/she has no interest adverse to the minor.
3. **Consent of Guardian. Corporate** -- When the proposed guardian is a corporate fiduciary, its written consent to act as such shall contain, in addition, a statement that it is not the fiduciary of an estate in which the minor has an interest, nor the surety of such a fiduciary; and that it has no interest adverse to the minor.
4. **Funds Arising From Litigation** -- If any part of the minor's estate was obtained as a result of litigation or compromise of litigation in a Court of record, a copy of the decree approving the compromise and distribution of the proceeds of the suit shall be attached to the petition.

## **Local Rule 12.5.2 Guardians of Minors. Appearance Before the Court.**

- a. **Appearance. Minor over Fourteen** -- If the minor is over fourteen (14) years of age, the minor shall appear in person at the presentation of the petition and shall make the selection of guardian before the Court. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition. When a minor appears in person, the minor need only state his/her selection of guardian.
- b. **Appearance. Other Persons** -- Neither a minor fourteen (14) years of age or under, nor the parents or proposed guardian of the minor need appear in Court at the presentation of the petition.

### **Local Rule 12.5.3 Information Required from Counsel.**

At the time of the presentation of the petition for the appointment of an individual guardian, counsel shall state the following in Court:

1. the total amount of the assets;
2. whether or not the minor resides in the same household with the proposed guardian; and
3. whether it is proposed to deposit the share of the minor in a restricted account.

### **Local Rule 12.5.4 Minor's Estate. Restricted Account.**

- a. **Waiver of Security** -- In lieu of the entry of security, the Court, in the decree appointing the guardian, may authorize the guardian to deposit the funds of the minor in an interest-bearing deposit insured by the Federal Deposit Insurance Corporation subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without order of Court, with a further requirement that the evidence of the deposit or investment, marked to indicate the restriction, shall be promptly exhibited to the Court.
- b. **Limitation:** The deposit under paragraph (a) of this Local Rule shall not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa. C.S.A. § 5103).
- c. **Payment at Majority of Minor --**
  1. The decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains his majority, upon the joint order of the guardian and the former minor without further order of the Court.
  2. If, upon subsequent order of this Court, withdrawals have been made from the account during minority, the guardian shall file a petition for his discharge upon the minor's attaining his majority. There shall be attached to the petition:
    - A. an affidavit or verified statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated;
    - B. an affidavit or verified statement by the guardian setting forth the date he attained his majority; that he has examined the account; that he has received the money, or benefit of the money, for which credit is taken in the account; that he approves account and requests that it be confirmed; and that, upon distribution to him of the balance shown thereon, subject to such additional credits as may be authorized by law and set forth in the petition and order, he agrees that the guardian shall be discharged.

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

### **Local Rule 12.5.5 Minor's Estate Not Exceeding Statutory Limitation.**

- a. **Disposition. In General** -- If the value of the real and personal estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa. C.S.A. § 5103), the Court may:
  - 1. authorize payment or delivery thereof to the minor or the parent or other person maintaining the minor;
  - 2. direct the deposit of the minor in a restricted account in the name of a natural guardian of the minor or of the minor individually; or
  - 3. make such provision for the retention or deposit of securities or other assets as the Court shall deem for the best interests of the minor.
- b. **Mortgage or Sale of Real Property.** -- If the value of the entire estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103), the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the provisions governing the same or mortgage of real property by a guardian. The order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

### **Local Rule 12.5.6 Minor's Estate. Allowances.**

- a. **In General. Responsibility of Guardian** -- Expenditures from income for the benefit of the minor, and Counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.
- b. **Permissive Petition** -- The guardian may petition the Court for approval of periodical payments from income needed for the maintenance, support, or education of the minor, the minor's spouse or children.
- c. **Mandatory Petition** -- Except as provided in paragraph (a) of this Local Rule, unless approval by the Court is first obtained, no payments shall be made by the guardian when payment is to be made from principal, or when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

- d. **Contents of Petition. Allowance for Maintenance, Support, or Education** -- A petition for an allowance from a minor's estate, for the maintenance, support or education of the minor, the minor's spouse or children, shall set forth:
1. the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;
  2. the age and residence of the minor; whether the minor's parents are living; the name of the person with whom the minor resides, and, if married, the name and age of the minor's spouse and children;
  3. the value of the minor's estate, real and personal, and the net annual income;
  4. the circumstances of the minor, whether employed or attending school; if the minor's parents, or the persons charged with the duty of supporting him, are living, the financial condition and income of such persons and why they are not discharging their duty to support the minor; and whether there is adequate provision for the support and education of the minor, or the minor's spouse and children;
  5. the date and amount of any provision allowance by the Court, and the name of the Judge who granted it;
  6. the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; and
  7. if the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any, given by him/her for his/her failure to do so.
- e. **Contents of Petition. Allowance of Counsel Fees** -- A petition for the allowance of counsel fees shall set forth the views of the guardian with respect to the reasonableness of the fees and contain sufficient facts to enable the Court to pass judgment on the matter. The following exhibits shall be attached to the petition:
1. a statement of counsel setting forth in detail the nature and extent of the services performed by him/her; and
  2. the joinder of the minor's parents or surviving parent; or, if both parents are deceased, the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor, and the spouse of a married minor.

### **Local Rule 12.6.1 Appointment of a Trustee. Exhibits.**

The following exhibits shall be attached to the petition:

1. a copy of the trust instrument; and
2. the written consent of any co-trustee.

### **Local Rule 12.7:1 Discharge of a Fiduciary. Additional Provisions.**

- a. **Affidavit or Verification** -- The affidavit or verified statement to the petition shall include an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent. If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notices by citation or otherwise.
- b. **Exhibits. Consents** -- Written consent of all parties in interest, and of the surviving or successor fiduciary, shall be attached to the petition. Such consent may be included in a satisfaction of award attached to the petition.
- c. **Discharge of a Personal Representative** -- When the value of the gross real and personal estate of a decedent does not exceed the value of the statutory limitation, the personal representative, after the expiration of one (1) year from first complete advertisement of the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S.A. § 3531). The petition shall conform as far as practicable to the requirements of a petition under Supreme Court Rule 12.7.

### **Local Rule 12.8:1 Partition. Additional Provisions.**

The fiduciary selling real property in a partition proceeding shall file an account after the sale is completed. The Court may dispose of the matter or may appoint an auditor to ascertain whether there are any liens or other encumbrances on such real property affecting the interests of the parties.

## **RULE 13. DISTRIBUTION -- SPECIAL SITUATIONS**

### **Local Rule 13.3:1 Report by Fiduciary.**

The report required by the Supreme Court Rules shall be submitted to the Court or to an auditor appointed by the Court, and shall include substantially the following:

1. **Unknown Distributee** -- If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or his counsel, setting forth:
  - A. The nature of the investigation made to locate the heirs of the decedent, in complete detail; and
  - B. in cases of intestacy, or where there are no heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain.



2. **Investigation Defined** -- The term "investigation," as used in this Local Rule, shall include inquiry of or as to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; labor union membership; places of employment; social, fraternal, or beneficial organizations; insurance records; church membership; school records; social security, Veterans' Administration, or military service records; naturalization records, if not native born; and such other sources of information as the circumstance- may suggest.
3. **Non-Resident Distributee** -- If the fiduciary requests the Court to withhold distribution to a non-resident distributee, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or the fiduciary's counsel, which shall set forth:
  - A. the relationship of the distributee to the decedent, and any available information concerning the distributee's present whereabouts;
  - B. in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and
  - C. the reason for the request that distribution be withheld, and the suggested manner of withholding.

## **RULE 14. INCOMPETENTS' ESTATES**

### **Local Rule 14.1:1 Practice and Procedure. In General.**

- a. Evidence. Depositions--Except for special reason appearing, the deposition of, or sworn or verified statement by, a superintendent, manager, physician or psychiatrist of any state-owned mental hospital or Veterans' Administration hospital, or a physician in attendance to the alleged incompetent will be accepted in evidence as to the mental or physical condition of a patient of said hospital or physician.
- b. **Guardians** --
  1. **Relatives and Household Residents** -- The Court, except in special circumstances, shall not appoint as guardian a relative of the incompetent or a person residing in the same household with him.
  2. **Non-residents** -- The Court, except in special circumstances, shall not appoint non-residents as guardians of the estate of incompetents residing within this county.
- c. **Security. Individual Guardian** -- In lieu of the entry of security, an individual guardian may be authorized to deposit the funds compromising the incompetent's estate in accounts insured by the Federal Deposit Insurance Corporation the account to be marked "Not to be withdrawn except on further Order of the Court."

Upon cause shown, the Court may dispense with the requirement of a bond when it finds that no bond is necessary.

- d. **Additional Assets** -- If, upon the filing of an inventory, it appears that the value of the personal estate which has, or is about to, come into the possession of the guardian exceeds the amount set forth in the original petition, the Clerk shall direct the Hearing Judge's attention to this fact in order that adequate security may be ordered and entered.
- e. **Testamentary Writings** -- All testamentary writings of the incompetent found by the guardian, or in the possession of any other person, shall, at the time of the filing of the inventory, be submitted by the guardian or such other person to the Hearing Judge for his inspection, together with a copy to be retained by the Judge for his private file.
- f. **Certificates of Appointment** -- The Clerk, in addition to issuing certified copies of the decree of appointment of a guardian, will issue a "Guardian's Certificate" when the security, if any, ordered by the Court has been entered.

#### **Local Rule 14.1:2 Incompetent's Estate. Decrees.**

- a. **In General** -- A petition to adjudicate a person incompetent shall have attached thereto:
  - 1. a proposed preliminary order in accordance with Local Rule 3.1:2; and
  - 2. a proposed decree.
- b. **Small Estates** -- If at a hearing the incompetency is established, and it appears that the gross estate does not exceed the statutory limitation for a small estate, the Court may award the entire estate to the person or institution maintaining the incompetent, or make such order as may be appropriate under the circumstances. In such case, a proposed final decree awarding said estate shall be attached to the face of the petition, in lieu of the final decree appointing a guardian.

#### **Local Rule 14.1:3 Incompetent's Estate. Proof of Service.**

Proof of service of notice shall be presented at the hearing. The affidavit or verification of service shall, in all cases, recite that the petition and citation were read to the alleged incompetent. When the alleged incompetent is in a hospital, service may be made by a physician in charge.

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

- a. A petition to adjudicate a person incompetent and to appoint a guardian of his/her estate shall set forth:
  1. the name and relationship of the petitioner to the alleged incompetent; if not related, the nature of the petitioner's interest;
  2. the age, marital status, and domicile of the alleged incompetent; whether he/she is a patient in a mental hospital; if so, the name and address of the hospital, the date of his/her 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 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/she 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 no guardian already appointed; and
  11. a prayer for a citation, directed to the alleged incompetent, with notice thereof to his/her next of kin and to such other persons as the court may direct, to show cause why he/she should not be adjudged an incompetent and a guardian of his/her estate appointed.
- b. The proposed guardian's written consent shall be attached .

## **RULE 15. ADOPTIONS**

### **Local Rule 15.4.1 Decree of Involuntary Termination.**

In all cases involving an involuntary termination of parental rights, the Court shall enter a decree nisi. Unless exceptions are filed thereto within ten (10) days of notice of filing the adjudication by any party in interest, the Clerk shall confirm the decree absolutely without further order of Court. No petition for adoption will be presented to the Court until a final decree has been entered.

### **Local Rule 15.5.1 Information for Certification of Adoption.**

Contemporaneous with the filing of a Petition for Adoption, the information required for a Certificate of Adoption shall be submitted to the Clerk upon a form approved by the Clerk or upon a form approved by the Vital Statistics Division of the Pennsylvania Department of Health.

### **Local Rule 15.5.2 Preliminary Order and Decree of Adoption.**

A petition for adoption shall have attached thereto:

- A. a proposed preliminary order in accordance with Local Rule 3.1:2; and
- B. a proposed decree of adoption.

[All Local Orphans' Court Rules adopted September 1, 2004, effective 30 days after publication in the *Pennsylvania Bulletin*.]