

ORPHANS' COURT RULES

The Pennsylvania Supreme Court Orphans' Court Rules, as amended through March 29, 2007, are in italics.

The Philadelphia Local Orphans' Court Rules, as amended through June 1, 2005, can be found below the corresponding state rule and are in normal type.

The prior Local Orphans' Court Rule Number, if any, is in Brackets.

RULE 1. JUDGES--LOCAL RULES

RULE 1.1 POWERS OF JUDGES

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

Committee Comment

This is the same as the first sentence of Section 731 of the Probate, Estates and Fiduciaries Code. The Judiciary Act Repealer Act repeals Section 731 effective June 27, 1980. This addition to the Supreme Court Rules is intended to clarify the situation as it will exist after June 27, 1980.

RULE 1.2 LOCAL RULES

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

Committee Comment

This is substantially identical to what formerly was Rule 1, before the addition of Rule 1.1

Philadelphia Local Rule 1.2.A. Petitions, Motions and Other Applications.

[Rule *1.1]

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

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

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

(a) The moving party or counsel for the moving party shall give notice of the presentation of the

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

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

Probate Section Comment: The Clerk may design a standard printed form to be used as a certification of service of notice in all cases. Neither the notice nor the certification of notice is to be contained in the averments of the petition or motion itself. Service of notice may be by personal service, regular mail, certified mail or publication depending upon type of petition and the location and identity of the person to be served with notice. See Sup. Ct. O.C. Rules 5.1 - 5.5.

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

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

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

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

Philadelphia Local Rule 1.2.B. Court En Banc. [Rule *1.2]

(1) The court en banc shall sit at a time designated by the Administrative Judge of the Orphans' Court Division.

(2) The court en banc shall convene only to hear exceptions referred to it pursuant to Rule 7.1.A(3).

(3) The Administrative Judge shall issue a scheduling order setting forth briefing requirements, and dates for filing of briefs and oral argument before the court en banc.

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

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

Philadelphia Local Rule 1.2.D. Costs. [Rule *1.5]

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

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

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

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

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

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

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

Philadelphia Local Rule 1.2.G. Identification of Signatures. [Rule *1.8]

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

Philadelphia Local Rule 1.2.H. Witnesses. Attachment. [Rule *1.9]

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

Philadelphia Local Rule 1.2.I. Individual Sureties. [Rule *1.10]

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

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

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

(3) Bond Without Surety. Confession of Judgment. The Court in its discretion may permit a party in interest to execute an individual bond, without surety. When a party in interest is authorized to execute

an individual bond, or an individual surety is approved, the Court may direct that the bond to be executed contain a warrant of attorney to confess judgment, with or without default, and that judgment thereon be entered of record in the office of the Prothonotary.

Philadelphia Local Rule 1.2.J. Corporate Sureties. Approval. [Rule *1.11]

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

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

(1) **In General.** Financial institutions having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court, provided that a copy (either the original or photocopy) of the certificate evidencing approval to conduct fiduciary activities issued by the appropriate state or federal banking regulator is attached to the petition. The institution shall certify in the petition that the certificate has been issued by the appropriate regulator and is valid as of the date of the petition.

(2) **Period of Approval.** The approval granted by the Court under paragraph (1) of this Rule shall be for a period of one year running from January 1 to December 31. In order for approval to be granted or renewed in a timely fashion, an institution must file said petition on or before December 15 in the year preceding the year in which the institution wishes to act as a corporate fiduciary. The approval granted by the Court is subject to compliance by the corporation with these Rules and with such other rules and regulations governing approval or renewal as the Court will, from time to time, promulgate.

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

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

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

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

Philadelphia Local Rule 1.2.M. Trusts Inter Vivos. [Rule *1.14]

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

Philadelphia Local Rule 1.2.N. Concurrent Jurisdiction. [Rule *1.15]

If any other Division of the Court of Common Pleas has previously assumed jurisdiction over any matter over which it has concurrent jurisdiction with the Orphans' Court Division, jurisdiction will not

be entertained by this Division except upon written order of the President Judge of the Court of Common Pleas.

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

- (1) **Official Depository.** The official depository of the Orphans' Court Division shall be a banking institution designated by the Board of Judges of the Court of Common Pleas.
- (2) **Deposits.** Moneys and securities paid or delivered into the Court shall immediately, upon receipt thereof by the Clerk, be deposited by the Clerk with the Court depository to the credit of the proper estate or proceeding.
- (3) **Withdrawals.** Withdrawals of money from the depository shall be authorized by decree or award of the Court and effected by check or order drawn by the Clerk, countersigned by a judge of the Court.
- (4) **Accounting by Clerk.** In January of each year, or at such other times as the Court may direct, the Clerk shall settle the depository account at the bank and shall present to the Court an account of the moneys paid into and out of the account, and shall exhibit the transaction ledger and bank statement as a voucher for the correctness thereof.

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

- (1) **Commencement of Action.** Every action for declaratory judgment shall be commenced by petition and citation.
- (2) **Contents of Petition.** The petition shall contain sufficient averments to entitle petitioner to the declaratory relief requested under the Pennsylvania Declaratory Judgments Act including:
 - (a) a concise statement of the facts relied upon to justify a declaratory judgment proceeding;
 - (b) the questions(s) of law with respect to which declaratory relief is requested;
 - (c) a list of all persons whose interest may be affected by the resolution of the questions(s); and
 - (d) a prayer for the relief desired.
- (3) **Exhibits.** The following exhibits shall be attached to the petition:
 - (a) a copy of the will or trust or other governing instrument; and
 - (b) a copy of any other document to be construed.
- (4) **Final Decree.** A form of final decree setting forth the declaratory relief shall be attached to the face of the petition.

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

RULE 1.3 FORMS

The Supreme Court hereby adopts forms for practice and procedure before the Registers of Wills and Orphans' Court Divisions of this Commonwealth which shall be acceptable in all jurisdictions in addition to forms otherwise approved or mandated for use pursuant to local rules. These forms for statewide practice are set forth in an Appendix to these rules. The forms may be revised and supplemented from time to time. The forms shall also be maintained for public access at a website designated by the Supreme Court.

Committee Comment – 2006:

A number of forms previously recommended by the Committee for use before the Register of Wills, but not formally adopted by the Court, had appeared following Rule 10.1. Most of those forms have now been consolidated or revised and set forth in the Appendix hereto. However, certain forms have been deleted because they are properly generated by the Register of Wills rather than counsel. The forms formerly set forth in the body of Rules 5.7, 6.12, 14.5, 16.11 and 16.12, some with minor revisions, have been moved to the Appendix as well. In addition, a number of new forms for use in the Orphans' Court have been adopted by the Court. The current website for electronic access to the forms is found at <http://www.aopc.org/Index/Forms/IndexForms.asp>. The forms posted on the website are capable of on-line completion.

RULE 2. CONSTRUCTION AND APPLICATION OF RULES

RULE 2.1 CONSTRUCTION OF RULES

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

RULE 2.2 WAIVER OF TIME LIMITATION

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

RULE 2.3 DEFINITIONS

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

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

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

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

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

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

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

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

Philadelphia Local Rule 2.3.A. Definitions. [Rule *23.1]

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

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

RULE 3. PLEADING AND PRACTICE

RULE 3.1 CONFORMITY TO EQUITY PRACTICE IN GENERAL

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

RULE 3.2 PETITION, ANSWER AND REPLY

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

Philadelphia Local Rule 3.2.A. Pleadings. [Rule *32.1]

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

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

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

(3) **Preliminary Objections.**

(a) Preliminary objections shall be limited to questions of (i) law, (ii) form, or (iii) jurisdiction, and may be filed by any party, and shall be accompanied by one original brief.

(b) An answer to preliminary objections shall be accompanied by one original brief and shall be filed within twenty (20) days after service of the preliminary objections and accompanying brief.

Philadelphia Local Rule 3.2.B. Disposition of Pleadings. [Rule *32.2]

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

(2) **Failure to Reply.** 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 ripe for disposition.

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

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

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

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

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

(4) **Joinder of Issue.** No formal joinder of issue is required. If an answer is filed which raises issues of fact, either petitioner's counsel or respondent's counsel should write to the Administrative Judge and request that the pleadings be assigned to a Hearing Judge for disposition.

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

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

RULE 3.3 AVERMENT OF INCAPACITY

Whenever the name of a person must be set forth in a pleading or statement of proposed distribution and such person is not sui juris, that fact shall be set forth, together with the name and address of the guardian, trustee or other representative of such person, if any. If the person not sui juris is a minor

who has no guardian of his estate, the minor's age, the name and address of his parents and of the person with whom he resides shall also be set forth.

RULE 3.4 FORM OF PETITION. EXHIBITS. CONSENTS

(a) A petition shall set forth

(1) the caption;

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

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

(4) a prayer for the relief desired.

(b) The petitioner shall attach to the petition

(1) a form of decree; and

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

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

Philadelphia Local Rule 3.4.A. Form. Additional Requirements. [Rule *34.1]

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

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

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

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

RULE 3.5 MODE OF PROCEEDING ON PETITION

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

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

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

(2) Exceptions. Objections. Copies of exceptions or written objections shall be delivered to the Auditing or Hearing Judge and served upon the accountant or counsel to the accountant, and upon all parties adversely affected thereby, or their counsel of record.

Philadelphia Local Rule 3.5.B. Citation Procedure. [Rule *35.2]

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

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

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

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

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

RULE 3.6 DEPOSITIONS, DISCOVERY, PRODUCTION OF DOCUMENTS AND PERPETUATION OF TESTIMONY

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

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

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

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

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

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

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

(2) The Court may make an order reciting the action taken at the conference, identifying the issues for trial, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered.

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

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

Rule 3.7 Electronic Filing and Service of Legal Papers.

(a) Authorization for Electronic Filing.

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

Note: Those jurisdictions which require e-filing must also provide the necessary technical assistance to those parties who lack the capability to electronically file legal papers.

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

(b) Electronic Filing of Legal Paper.

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

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

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

(4) Any party may require the filing party to file the original or a hard copy of a legal paper or exhibit by filing a notice to file with the Clerk and serving a copy of the notice upon the filing party. The filing party shall file the specified document with the Clerk within fourteen (14) days after service of the notice. Upon disposition of the matter before the Court, an original document may be returned to the party who filed it, or retained by the Court, as the Court may determine.

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

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

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

(3) *Unless retained by the Court, the filing party shall maintain the original of all documents so certified, together with any exhibits filed, for five (5) years after the later of:*

(i) the disposition of the case;

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

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

(d) Website and Filing Date.

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

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

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

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

(f) Fees.

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

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

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

(h) Service of Legal Papers by Parties.

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

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

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

Note: This Rule is designed as a general enabling mechanism by which local judicial districts can, if they so choose, implement electronic filing. Implementation procedures not inconsistent with this Rule will be determined by local rules of court. Nothing in this Rule is intended to

change the procedural requirements of Orphans' Court practice, as embodied in the statutes and rules of court. Rather this Rule is intended to facilitate the delivery of legal papers to the Court and the parties, as well as to reduce record management burdens in the office of the Clerk. The terms "electronic filing," "filing party," and "legal paper" are defined in Rule 2.3.

The Court may, from time to time, modify the approved electronic filing system to take into consideration the costs and security of the system, and the maintenance of electronic data and images.

Existing procedures regarding record retention for paper documents by the Clerk shall apply to electronically filed documents. A local Orphans' Court which permits electronic filing may require filing and maintenance of paper documents or exhibits; it may also accept paper documents, convert such documents to electronic format, and destroy the paper documents. (See Record Retention & Disposition Schedule with Guidelines, adopted by the Supreme Court of Pennsylvania by Order, dated November 28, 2001, as part of the amendment to Pa.R.J.A. No. 507).

Philadelphia Local Rule 3.7.A. Electronic Filing and Service of Legal Papers

(1) Authorization for Electronic Filing.

(a) Effective immediately, parties may file all legal papers with the Clerk by means of electronic filing in portable document format ("pdf").

(b) Commencing July 1, 2005, parties shall file all legal papers with the Clerk by means of electronic filing in pdf.

(c) Effective immediately, in the event any legal paper or exhibit is submitted in hard-copy format, the Clerk shall convert such legal paper or exhibit into pdf, without changing the content or format of the legal paper or exhibit, and shall accept the legal paper or exhibit for filing in pdf. The Clerk shall return the hard-copy legal paper or exhibit to the filing party for retention as required by Pa.O.C.R. 3.7(c)(3).

(2) Website, Username and Password.

(a) Website. The Orphans' Court Electronic Filing System shall be available at all times at the Court's website address, <http://courts.phila.gov>, or at such other website as the Court may designate from time to time.

(b) Username and Password. To obtain access to the Orphans' Court Electronic Filing System, counsel or a party not represented by counsel ("filing party") shall apply for a Username and Password at the Court's website.

(3) Electronic Filing of Legal Paper.

(a) A filing party shall file all legal papers and exhibits in pdf at the Court's website.

(b) In the event an exhibit is not available in pdf and the filing party is unable to convert the exhibit to pdf, the filing party shall submit the exhibit via facsimile utilizing the Electronic Filing Transmittal Form generated by the Electronic Filing System.

(c) The Clerk shall not maintain a hard copy of any legal paper or exhibit filed electronically under this rule.

(d) A hard copy of the legal paper shall be signed and, as required, verified prior to the electronic filing of the legal paper, and the filing party shall retain such hard copy as required by Pa.O.C.R. 3.7(b)(4) and 3.7(c)(3).

(4) Redaction and Access.

(a) All legal papers and exhibits filed electronically shall be available electronically to the filing parties, as the Court may provide from time to time. The Clerk shall maintain computer terminals in the Clerk's office for this purpose.

(b) The Clerk shall provide public access to a redacted copy of electronically-filed legal papers and exhibits, as the Court may provide from time to time. The Clerk shall maintain computer terminals in the Clerk's office for this purpose.

(c) The Clerk shall redact the following personal data identifiers from all electronically-filed legal papers, including the Cover Sheet but excluding exhibits, for public access:

- i. The name of the minor in minors' estates.
- ii. Social Security numbers.
- iii. Dates of birth.
- iv. Financial account numbers.
- v. Home addresses.

(d) A filing party shall redact the personal data identifiers listed in subsection (c) from all exhibits to a legal paper. The Clerk shall not review exhibits to determine whether personal data identifiers have been redacted.

(5) Filing Date.

(a) Immediately upon receipt of the legal paper, the Court shall provide the filing party with email notification that the legal paper has been received by the Court's Electronic Filing System.

(b) Within six (6) business hours of receipt of the legal paper, the Clerk shall provide the filing party with email notification that the legal paper has been accepted for filing or rejected.

(c) A legal paper accepted for filing shall be deemed to have been filed as of the date and time it was received by the Court's Electronic Filing System. If a legal paper is rejected, the Clerk shall specify the reason. Subject to the provisions of subsection (d), a rejected legal paper shall be deemed as not having been filed.

(d) Any filing party for whom the failure of the Court's website or the erroneous rejection of a legal paper resulted in an untimely filing may file a petition requesting that the legal paper be deemed filed as of the submission date. Such petition shall state the date and time of the alleged failure or rejection. A petition alleging failure of the Court's website shall state why the legal paper could not be timely filed in person in the Clerk's office. A petition alleging erroneous rejection of a legal paper shall state why the rejection was erroneous and why the legal paper could not be timely resubmitted.

(6) Automation Fee. Payment of Filing Fees.

(a) Effective immediately, the Clerk shall collect, in addition to all other applicable fees, an automation fee of \$10.00 for each legal paper for which a filing fee is now charged.

(b) Commencing July 1, 2005, the Clerk is authorized to charge the sum of \$1.00 per page for each page of a legal document or exhibit which is not filed in pdf.

(c) All fees collected pursuant to this rule shall be set aside by the Clerk and remitted monthly to the First Judicial District's Procurement Unit.

(d) The Clerk shall not accept a legal paper as filed prior to payment of the required filing fee.

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

changing technology. All such administrative procedures shall be posted on the Court's website.

Probate Section Comment:

The Clerk's staff has traditionally functioned as the Court's gatekeeper by reviewing legal papers presented for filing to insure conformity with applicable rules and procedures. Any legal paper which did not comply with the Rules of Court was returned to the filing party. No change in the gatekeeper function is intended by reason of implementation of electronic filing. Instead, communication between the Clerk's staff and the filing party may now occur electronically as set forth in Local Rule 3.7.A(5)(c) and (d). Filing parties are encouraged to allow sufficient time to correct deficiencies in time-sensitive matters. The Clerk's staff will continue to be available to review the hard copy of any legal paper prior to electronic filing to assure conformity with applicable rules and procedures.

RULE 4. COMPUTATION OF TIME

RULE 4.1 GENERALLY

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

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

RULE 4.2 PUBLICATION FOR SUCCESSIVE WEEKS

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

Rule 4.3 Computation of Months

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

RULE 5. NOTICE

RULE 5. 1 METHOD

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

(a) by service upon the attorney appearing of record for such person; or

(b) if there is not such attorney, by personal service, delivery at the residence of such person or by mail, if his residence is known; or

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

(d) in such other manner as the court shall direct.

Philadelphia Local Rule 5.1.A. Method. Legal Periodical. [Rule *51.1]

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

Philadelphia Local Rule 5.1.B. Method. Public Sale of Real Property. [Rule *51.2]

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

(1) by advertisement once a week for three successive weeks in a newspaper of general circulation in each county wherein any portion of the real estate is located and in the legal publication, if any, designated by Rule of Court of that county for publication of notices, the first publication to be made not less than twenty-one (21) days before the date of sale;

(2) by posting a notice at a conspicuous place on the premises; and

(3) at least twenty (20) days prior to sale, by notice to each party in interest by service on the attorney appearing of record for such party, or if there is no such attorney, by personal service or, if the party's residence is known, by delivery at such residence or by mail. The advertisement and notices shall specify the time and place of the proposed sale and shall clearly identify the property by the street address or other adequate description.

RULE 5.2 METHOD; PERSON UNDER INCAPACITY

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

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

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

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

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

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

RULE 5.3 TIME FOR NOTICE

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

RULE 5.4 RETURN OF NOTICE

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

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

(1) In General.

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

(b) Personal Service. Return of personal service of notice shall set forth the date, time, place and manner of service, and that a true and correct copy of the notice was handed to the person served.

(c) Registered or Certified Mail. Return of notice by registered or certified mail shall set forth the date and place of mailing and shall include the return receipt, or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowledge or cause to believe that such notice was not received by the person to be notified, it shall be so stated in the return. When a person resides in a foreign country, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

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

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

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

- (b) the price obtained; and
- (c) the name and address of the purchaser and an averment that the purchaser was the highest bidder.

RULE 5.5 CHARITIES; NOTICE TO THE ATTORNEY GENERAL

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

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

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

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

Explanatory Note: This is an adaptation from rules presently in effect in a number of counties which in turn were derived from informal recommendations made by Mr. Justice McBride when he was Attorney General, published in Fiduciary Review, April 1958. That same article lists many non-accounting type proceedings in which notice would also be required.

Reproduction and mailing costs for the sender, as well as voluminous filing problems for the

*Attorney General seem to render it inadvisable to require submission of a copy of the account, pleadings, or other documents with the initial notice. The 15-day period should be adequate to enable the Attorney General to request and obtain a copy thereof in any proceeding where he deems further consideration desirable. The rule has been drafted with the objective that it be adaptable to a printed form of charitable notice. A number of counties have already adopted printed forms with considerable success. There has not been complete unanimity among practitioners with regard to the scope of the doctrine announced in *Pruner Estate*, 390 Pa. 529, 136 A.2d 107, 1957. Despite the fact that the reported opinion referred only to charitable trusts and despite the distinction drawn between a charitable trust and an outright legacy to charity in *Craig Estate*, 356 Pa. 564, 52 A.2d 650, 1947, it is thought that the underlying principles of *parens patriae* should be equally applicable to an outright pecuniary legacy to a named charity. On the other hand it seems useless to demand notice of a small pecuniary legacy which has or will be paid in full.*

*This notice is not intended to supplant or obviate the required application for leave of the Attorney General to institute *cy pres* proceedings for pre-1948 trusts under the provisions of the Act of 1855, P.L. 328, as amended.*

The words "or his designated deputy" are added to conform with the wording in the initial paragraph and for further identification of the person to whom notice is usually most appropriate. The change from \$10,000 to \$25,000 avoids a nuisance for all parties in instances where the services of the Attorney General are not required.

Committee Comment--2006: *See Appendix for form of notice under Rule 5.5.*

RULE 5.6 NOTICE TO BENEFICIARIES AND INTESTATE HEIRS

(a) Requirement of Notice. *Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or the personal representative's counsel shall send a written notice of estate administration in the form set forth in Rule 5.7.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RULE 5.7 FORM OF NOTICE AND CERTIFICATION OF NOTICE TO BENEFICIARIES AND INTESTATE HEIRS

Committee Comment – 2006: The form of notice and certification of notice required by Rule 5.6 and formerly set forth in Rule 5.7 have been revised and moved to the Appendix. Subparagraph (f) has been restated to correct a typographical error in the prior version of the rule.

RULE 6. ACCOUNTS AND DISTRIBUTION

RULE 6.1 FORM

Accounts shall conform to the following rules:

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

(b) *Except where otherwise provided by a special order of the local Court in a particular case, principal and income shall be accounted for separately within the account. As illustrated in the Model Accounts set forth in the Appendix, every account shall contain:*

(1) *cover page;*

- (2) *summary and index page;*
- (3) *separate schedules, as needed, which set forth receipts, gains or losses on sales or other dispositions, disbursements, distributions, investments made and changes in holdings, and other schedules as appropriate; and*
- (4) *signature and verification pages by the accountant(s); the verification of the personal representative's account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the account unless the personal representative has been directed by the court to file an account prior to that time.*
- (c) *Assets held by the accountant on the closing date of the account shall be separately itemized.*
- (d) *Testamentary assets shall be segregated from appointive assets.*
- (e) *Except where otherwise provided by a special order of the local Court in a particular case, Accounts shall be prepared and filed in substantial conformity with any form approved by the Supreme Court of this Commonwealth.*
- (f) *The Uniform Fiduciary Accounting Principles and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts are approved as an elaboration of the requirements of this rule. Reference may be made to them for determination of the adequacy of a particular account. The model Account formats set forth in the Appendix to the Pa.O.C. Rules are the approved forms for purposes of paragraph (e) of this Rule in lieu of all forms heretofore approved.*

Committee Comment: *For completeness, paragraph (a) of this Rule is expanded to include distributions as a category. Paragraph (b) of this Rule is expanded to delineate the individual schedules required within an account and to require that each account be signed at the end and verified. Consistent with the objective to standardize statewide practice, former paragraph (e) of this Rule was stricken and present paragraph (e) was modified to require use of forms of Account consistent with model forms except upon special order of Court. The National Fiduciary Accounting Standards Project (1983) Report of Fiduciary Accounting Standards Committee previously referenced in Pa.O.C. Rule 6.1 is now included in the Appendix following the Pa.O.C. Rules. However, the Orphans' Court Procedural Rules Committee has corrected and modified the Project's Model Estate Account and Model Trust Account attached to that Report and added a Model Charitable Remainder Unitrust Account. All Model Accounts are also now included in the Appendix following the Pa.O.C. Rules.*

Philadelphia Local Rule 6.1.A. Form of Accounts. [Rule *61.1]

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

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

RULE 6.2 FORM. SEPARATE ACCOUNTS FOR MINORS

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

RULE 6.3 NOTICE TO PARTIES IN INTEREST

No account shall be confirmed unless the accountant has given written notice of the filing of the account and the call thereof for audit or confirmation to every unpaid claimant who has given written notice of his claim to the accountant and to every other person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir or next of kin. The notice shall state the date, time and place of the audit to the extent then known; shall also state the last day to file objections to the account in counties where the local rules require written objections; and shall include a copy of the statement of proposed distribution in counties where accounts are not audited in open court.

Philadelphia Local Rule 6.3.A. Time and Contents of Notice. [Rule *63.1]

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

- (1) the date and place of the audit, the time and the courtroom to be furnished upon request unless given in the notice;
- (2) that (except as to non-residuary legatees or claimants whose legacies or claims have been or will be satisfied in full) a copy of the account and a copy of the will or trust instrument accompany the notice, or have been furnished previously, or will be sent upon request, as the case may be, and that any person who objects to the transaction shown in the account or in the notice must appear in person or by counsel at the audit and file written objections with the Clerk in accordance with Rule 6.10.A, or the Court may assume that there is no objection and may approve the account as stated.
- (3) the accountant's understanding of the nature of the claim, interest or objection of the party notified; whether the claim, interest or objection is admitted or contested; if admitted, whether it will be paid in full or in part, and, if contested, that an appearance in person or by counsel must be made at the audit and that written objections must be filed with the Clerk in accordance with Rule 6.10.A, or the claim or objection may be dismissed.
- (4) the amount of any receipt, disbursement, claim for counsel fee and/or fiduciary's commission, which does not appear in the account and which is to be reflected in the adjudication; and
- (5) the accountant's interpretation of any dispute, or fairly disputable question, known to or reasonably ascertainable by the accountant, together with a copy of the instrument or material parts thereof containing any provision which forms the basis of the dispute, and a statement that if the person notified does not agree with the accountant's interpretation, he or she must appear at the audit in person or by counsel and file written objections with the Clerk in accordance with Rule 6.10.A, or the Court may assume that he or she agrees with the accountant's interpretation.

Probate Section Comment: Confirmation of the account of a terminated trust, guardianship or agency by annexation is authorized under Section 3501.2 of the Probate, Estates and

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

Philadelphia Local Rule 6.3.B. Supplemental Notice. [Rule *63.2]

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

RULE 6.4 TIME FOR FILING

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

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

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

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

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

RULE 6.5 FILING WITH THE REGISTER OF WILLS [REPEALED]

RULE 6.6 FILING WITH THE CLERK OF THE ORPHANS' COURT

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

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

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

- (1) advertising once a week for two (2) successive weeks in The Legal Intelligencer and in one Philadelphia daily newspaper of general circulation; and
- (2) posting copies of the audit lists in the office of the Clerk and on the day of the audit in or about the several courtrooms.

Philadelphia Local Rule 6.6.B. Division of Accounts. [Rule *66.2]

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

RULE 6.7 FILING COPY WITH THE DEPARTMENT OF REVENUE

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

RULE 6.8 FILING COPY WITH THE UNITED STATES VETERANS' ADMINISTRATION

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

RULE 6.9 STATEMENT OF PROPOSED DISTRIBUTION

*(a) A fiduciary filing an account shall file a statement of proposed distribution, or, as local rules may prescribe, a request that distribution be determined by the court or an auditor.
(b) The statement of proposed distribution shall be filed at such place and time, shall be in such form and shall be accompanied by such papers, and shall be advertised or such notice thereof shall be given, as prescribed by rules adopted by the Supreme Court or, in the absence thereof, the local Orphans' Court Division.*

Committee Comment--2006: Form petitions for adjudication of a decedent's estate, trust, guardianship of an incapacitated person, guardianship of a minor and estate of a principal to be stated by an agent under a power of attorney have been adopted and appear in the Appendix.

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

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

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

Philadelphia Local Rule 6.9.B. Forms. Execution. Verification. [Rule *69.1.1].

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

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

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

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

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

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

- (a) a petition for adjudication and statement of proposed distribution;
- (b) copies of all agreements with respect to settlements and compromises;
- (c) copies of agreements, if any, with respect to the accountant's compensation, if credit therefor is taken in the account or requested at the audit;
- (d) a waiver of an income accounting by those entitled to the income, if the account does not contain a complete income accounting and such a waiver is not attached to the account;
- (e) the official receipt for any inheritance tax paid during the period of the accounting; and
- (f) a statement of the method and date of giving notice to all parties in interest of the filing of the account and the petition for adjudication and statement of proposed distribution and of the time of the audit, or alternatively, an averment that such notice shall be given and a certification thereof shall be submitted at the audit as hereinafter set forth. In those instances where notice has been given, a copy of said notice, as well as the names and addresses of the parties notified, shall be appended to the petition for adjudication and statement of proposed distribution. In those instances where notice is yet to be given, a copy of said notice, as well as the names and addresses of the parties notified, shall be submitted to the Court at audit, together with a statement executed by the accountant or the accountant's counsel certifying that notice has been given.

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

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

(3) Accounts of Trustees. In addition to the papers required by Rule 6.9.D.(1), at the time of the

filing of an account of a trustee, counsel shall file:

- (a) the original letters or the original trust instrument, if not submitted at a prior audit; and
- (b) a copy of the trust instrument, certified by the accountant or counsel to be true and correct.

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

- (a) a copy of the will, deed or decree by which the guardian was appointed;
- (b) a statement that notice of the audit has been given to all known, unpaid claimants;
- (c) a statement of the former minor or, if the former minor has been adjudicated an incapacitated person, of the guardian of the estate of the former minor, setting forth the date the former minor attained majority; and that the former minor or the guardian of the estate of the former minor: (i) has examined the account; (ii) approves the account and requests that it be confirmed; and (iii) agrees that the guardian of the estate of the minor shall be discharged upon distribution to the former minor or to the guardian of the estate of the former minor of the balance shown in the account, subject to such additional credits as may be authorized by law and set forth in the adjudication.

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

- (a) a statement of the manner and date of appointment of the guardian and a copy of the decree by which the guardian was appointed; and
- (b) a statement of whether a personal representative has been appointed if the incapacitated person is deceased; and if so, the date and place of grant of letters and a valid certificate of appointment.

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

- (a) a certificate of appointment issued within three months of the date of the filing or a copy of the instrument evidencing the authority of the fiduciary to receive the fund, certified by the proper authorities at the place of issuance to be in effect at the time of the filing;
- (b) an affidavit by the foreign fiduciary setting forth whether or not an ancillary administrator has been appointed in Pennsylvania, together with averments that: (i) the foreign fiduciary is authorized, under the laws of the jurisdiction in which the foreign fiduciary qualified, to receive the fund to be distributed; (ii) the filing of security has been waived, or the amount of the bond which has been filed and the name of the surety; and (iii) there are no creditors within the Commonwealth of Pennsylvania of the estate for which the foreign fiduciary has been appointed and no rights of any resident of Pennsylvania will be adversely affected by the requested distribution.

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

Probate Section Comment: Paragraph (5) applies to those who have been adjudged an incapacitated person by the Court, whether under Chapter 55 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 5501 et seq.) or its predecessor. The requirements of paragraph (6) are based on Chapter 41 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 4101

et seq.). Particular attention is directed to Section 4111 and its correlation with paragraph (6)(b)(iii) of the Rule. Under Section 4111, the Court has broad discretionary power to refuse distribution of a share of an estate to the domiciliary personal representative of a deceased nonresident creditor or other distributee and to require an ancillary administration in Pennsylvania. Paragraph (7) describes situations in which original documents need not be filed with the audit papers. Letters testamentary, letters of administration, inheritance tax receipts and deeds of trust which are filed with the audit papers will customarily be returned to counsel once an adjudication is issued.

Philadelphia Local Rule 6.9.E. Appearances. [Rule *69.2]

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

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

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

RULE 6.10 OBJECTIONS TO ACCOUNTS AND STATEMENTS OF PROPOSED DISTRIBUTION

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

Philadelphia Local Rule 6.10.A Written Objections.

Objections to an account or statement of proposed distribution must be in writing and shall be filed with the Clerk of the Orphans' Court no later than the time and date fixed for the original call of the account for audit, unless otherwise specified by Order of Court.

Probate Section Comment: See Rule 6.3.B, which provides for supplemental notice to parties in interest when an audit is continued.

Philadelphia Local Rule 6.10.B. Objections. [Rule *76]

(1) Family Exemption.

(a) Prior to Audit. Written objections to the allowance of the family exemption shall be filed with the Clerk within twenty (20) days of the filing of the petition for allowance. Such objections shall be referred to the Auditing Judge for disposition, or, in special circumstances the petition will be

assigned to a judge for hearing and determination. In the absence of objection, the family allowance may be granted on petition.

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

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

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

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

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

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

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

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

(8) Effect Upon Distribution. When the matters which are the subject of a schedule of distribution, or the report of an auditor or master, are so separate and distinct that an objection to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the schedule of distribution or report shall not be suspended, except as to those matters to which objections have been taken; distribution may proceed as to the remainder; and any party from whom such distribution has been withheld may petition the Court to order distribution.

Philadelphia Local Rule 6.10.C. Accounts and Distribution. [Rule *145]

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

RULE 6.11 CONFIRMATION OF ACCOUNTS. AWARDS

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

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

Philadelphia Local Rule 6.11.A. Schedules of Distribution. [Rule *72]

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

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

(3) Consent or notice.

(a) Written consents to the schedule of distribution may be attached thereto. The attorney for the accountant shall certify whether or not the parties whose consents are attached constitute all parties in interest affected by the filing of the schedule and all other parties to whom notice was directed by the Court.

(b) Notice of the filing of the schedule shall be given to all parties in interest affected thereby and to such other parties as the Court may direct, except those parties whose consents are attached. The notice shall state the date of filing, that a copy of the schedule accompanies the notice or will be sent upon request, and that any party who objects to the schedule must file objections within twenty (20) days of the filing of the schedule under penalty that the Court may otherwise assume that there is no objection and may approve the schedule as filed. (i) Notice shall be given no later than the day of the filing of the schedule, by a letter addressed to the last known address of the party or to his or her attorney of record. (ii) It shall be sufficient return of notice for the attorney for the accountant to certify on the schedule that due notice of the filing thereof was given as required by this Rule. A copy of the letter of notice and a list of those to whom notice was sent shall be submitted with the schedule.

(4) Objections.

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

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

(5) Approval.

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

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

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

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

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

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

(b) Description. Certification by Counsel. Real property shall be described in the same detail and with the same particularity as is commonly required to be included in deeds, and, in addition, shall include information pertinent to the derivation of title. Counsel for the accountant shall certify that counsel or counsel's agent has examined the last recorded deed or the record thereof in the public office for recording deeds in the county in which the real estate is located and that the description in the schedule is in conformity therewith.

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

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

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

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

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

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

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

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

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

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

(h) an itemized list, either incorporated in the petition or attached as an exhibit, setting forth under separate headings: (i) all disbursements made prior to the filing of the petition, including the amounts and dates paid, the names of the payees and a description of the purposes of the disbursements; and (ii) all unpaid claims against the estate, including the amounts of such claims, the names of the claimants, the bases for such claims and indicating which claims are admitted. In the case of an insolvent estate, such disbursements and unpaid claims shall be listed under separate categories according to the order of priority of payment under Section 3392 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. ' 3392).

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

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

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

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

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

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

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

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

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

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

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

RULE 6.12 STATUS REPORT BY PERSONAL REPRESENTATIVE

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

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

(1) completion of administration of the estate;

(2) whether a formal account was filed with the Orphans' Court;

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

(c) *Form of report. The report required by this Rule shall be in substantially the form adopted by the Supreme Court.*

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

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

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

Committee Comment--2006: *The form of status report has been revised and moved to the Appendix.*

RULE 7. EXCEPTIONS

RULE 7.1 EXCEPTIONS

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

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

(c) **Time for Filing Exceptions.** *If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.*

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

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

(f) **Time Limits for Decision on Exceptions.** *The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.*

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

Note

The 2000 amendment discontinues the prior practice permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication. The 2000 amendment limits the filing of exceptions to order, decree or adjudication which are final appealable orders after disposition of exceptions under Pa.R.A.P. 341(b) or amended Pa.R.A.P. 342. If an aggrieved party appeals from such order, that appeal shall not affect proceedings with regard to other aspects of the case. It is understood that failure to appeal shall constitute a waiver of any issues in the order which the Orphans' Court has determined as final. The 30 day appeal period pursuant to Pa.R.A.P. 903 from such final orders begins to run from the date of entry of an order disposing of exceptions or on the date of a deemed denial pursuant to Subdivision (f) of this rule. Where no exceptions are filed, the 30 day appeal period runs from entry of the final appealable order. If an order would not become final within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342, then no exceptions may be filed until subsequent entry of a final order within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342. This will eliminate the practice in some counties of permitting issues to be raised by exception following entry of an otherwise interlocutory order and raising the same issues in exceptions to a final order, decree or adjudication. See, e.g., Estate of McCutcheon, 699 A.2d 746 (Pa.Super.1997).

Rule 7.1 permits but does not require exceptions to orders pursuant to Pa.R.A.P. 341(b) and Pa.R.A.P. 342. The election of an aggrieved party not to file exceptions will not result in waiver of issues on appeal. However, nothing in this rule is intended to abrogate the requirement of decisional law or court rule mandating that issues on appeal be preserved by a timely petition, answer, claim, objection, offer of proof or other appropriate vehicle. The 2000 amendments to Rule 7.1 resolve the dilemma that the judiciary and litigants have faced in determining whether exceptions are required under local practice and whether issues have been preserved for appeal in accordance with the disparate rules throughout the Commonwealth. The prior practice also made it difficult to draw conclusions as to whether an appellate decision constituted controlling authority on a statewide basis or whether the holding was based in whole or part on the vagaries of a local rule. Making exceptions optional with an aggrieved party will expedite the appeals process where the issues have been fully litigated and the reasons for the trial court's decision are clear and the aggrieved party reasonably believes the trial court cannot be convinced that its decision is in error. Parties frequently overlook the requirement that the order from which a party seeks to appeal and notice of that order from the prothonotary be entered on the docket before an appeal can be taken. See Pa.R.A.P. 301(c), Pa.R.C.P. 236 and Orphans' Court Rules 1.2 and 3.1. See also Frazier v. City of Philadelphia, 735 A.2d 113 (Pa. 1999). This requirement applies to Orphans' Court orders. See Estate of Keefauver, 518 A.2d 1263 (Pa.Super. 1986). Local practice shall continue to govern with respect to place of filing, briefs, oral argument, courts en banc, etc. Neither Pa.R.C.P. 227.1 nor Pa.R.C.P. 1517 shall apply to Orphans' Court matters. Subdivision (d) provides that where there are multiple aggrieved parties to a final order, any aggrieved party may file an appeal without filing exceptions. If any other party has filed exceptions prior to a timely appeal by any other party, those exceptions are nullified by the appeal. Once any aggrieved party has filed a timely appeal, no other party may file exceptions even if the time period for filing exceptions has not otherwise expired. Any exceptions filed after an appeal has been taken will be deemed a nullity. See also Pa.R.A.P. 1701(b).

In order to avoid delay of final determination of adoption and termination matters, see In Re A.L.A., 710 A.2d 363 (Pa.Super. 1998), Subdivision (e) eliminates post-trial practice in such case.

Philadelphia Local Rule 7.1.A. Exceptions. Rules Governing.

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

- (a) be specific as to description and amount;
- (b) raise one and only one issue of law or fact, but if there are several exceptions relating to the same issue of law or fact, all such exceptions shall be included in one exception; and (c) set forth briefly the reason or reasons in support of the exception.

(2) The Hearing or Auditing Judge shall issue a scheduling order setting forth dates for filing of briefs and oral argument.

(3) Exceptions shall be disposed of by the Hearing or Auditing Judge, sitting alone, unless the Administrative Judge, at the request of the Hearing or Auditing Judge, refers a matter, in whole or in part, to the court en banc for disposition. Only the Administrative Judge, acting at the request of the Hearing or Auditing Judge, may refer a matter to the court en banc.

Court Comment: This is the exclusive method by which a matter may be referred to the court en banc. The Court will not entertain any petitions, letters or other correspondence requesting that a matter be referred to the court en banc.

Probate Section Comment: See Pa. O.C. Rules 7.1 and 7.2 regarding exceptions.

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

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

RULE 7.2 TRANSCRIPT OF TESTIMONY.

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

RULE 8. AUDITORS AND MASTERS

RULE 8.1 NOTICE OF HEARINGS

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

Philadelphia Local Rule 8.1.A. Appointment. [Rule *80]

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

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

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

Philadelphia Local Rule 8.1.B. Manner and to Whom Given. [Rule *81.1]

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

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

RULE 8.2 FILING OF REPORT

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

Philadelphia Local Rule 8.2.A. Where Filed. [Rule *82.1]

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

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

RULE 8.3 FORM OF AUDITOR'S REPORT

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

RULE 8.4 FORM OF MASTER'S REPORT

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

RULE 8.5 TRANSCRIPT OF TESTIMONY

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

RULE 8.6 NOTICE OF FILING REPORT

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

RULE 8.7 CONFIRMATION OF REPORT

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

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

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

(1) Auditor to Examine and Audit Account.

(a) Time and Contents of Notice. At least thirty (30) days prior to filing the report, the auditor appointed to examine and audit an account shall give notice to all parties in interest or their counsel which shall state: (i) the date upon which the report filed; (ii) that a copy of the report is either enclosed or will promptly be sent upon request; and (iii) that any person who objects to the report must file written objections thereto with the auditor prior to the intended filing date under the penalty that the Court may otherwise assume that there is no objection and may accept the report as submitted.

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

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

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

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

RULE 8.8 SECURITY FOR EXPENSES AND FEES

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

Philadelphia Local Rule 8.8.A. Filing With Clerk. [Rule *88.1]

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

RULE 9. OFFICIAL EXAMINERS

RULE 9.1 APPOINTMENT OF OFFICIAL EXAMINERS

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

Philadelphia Local Rule 9.1.A. Charitable Trusts. Visitorial Powers. [Rule *92]

(1) Exercise: In General.

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

(2) Cemetery Trusts.

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

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

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

Philadelphia Local Rule 9.1.C. Compensation. [Rule *94]

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

(2) Charitable Trusts.

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

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

RULE 10. REGISTER OF WILLS

RULE 10.1 PROCEDURE AND FORMS

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

Committee Comment--2006: The forms adopted by the Supreme Court appear in the Appendix. The forms previously recommended by the Committee, which followed Rule 10, have been revised. Certain forms previously recommended by the Committee, but which are generated by the Register of Wills instead of counsel, have been eliminated.

RULE 10.2 APPEALS FROM THE REGISTER OF WILLS

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

Philadelphia Local Rule 10.2.A. Certification of Record. [Rule *102]

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

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

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

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

Philadelphia Local Rule 10.2.B. Certifications. Assignment to an Audit List. Notice. [Rule *103]

(1) Certifications allowed pursuant to Rule 10.2.A, after filing proof of service of the citation, shall be placed on the audit list and assigned by the Clerk to the Judges in rotation. In special circumstances, the Administrative Judge may assign a judge to hear the matter. Where proof of service is filed before 3 p.m. on the fifth Wednesday preceding an audit list, the matter shall be placed on that audit list.

- (2) The Clerk shall forthwith send notice to counsel who filed the petition for citation of the date when the matter will appear on the audit list.
- (3) The Clerk shall, at least fifteen (15) days prior to the call of such audit list, give notice in writing to all parties in interest of the following:
- (a) that the matter has been placed upon an audit list, and the date, the time and the courtroom scheduled for the call of the audit;
 - (b) the nature of the interest of the person to whom such notice is given; and
 - (c) a brief description of the nature of the dispute.
- (4) In those instances where the matter has been specially assigned by the Administrative Judge to a Hearing Judge, notice shall be given by such party, and at such time and in such form, as the Hearing Judge may direct.

Philadelphia Local Rule 10.2.C. Appeal from Register. [Rule *104]

(1) Commencement of Appeal.

- (a) Appeals from the judicial acts or proceedings of the Register shall be initiated by filing a notice of appeal with the Clerk on the form supplied by the Clerk and with respect to an Inheritance Tax Appeal, a copy shall be filed with the Register.
- (b) After the notice of appeal has been filed with the Clerk, the Register upon request shall forthwith transmit the record to the Clerk.

(2) Petition for Citation.

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

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

(3) Issuance of Citation.

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

(4) Service of Citation.

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

(5) Placement on Audit List.

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

(6) Notice of Audit List.

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

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

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

(7) Special Notice.

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

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

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

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

(3) If a jury trial is granted, as provided in paragraph (1) or (2) hereof, the Hearing Judge shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the Hearing Judge shall determine.

Philadelphia Local Rule 10.2.E. Inheritance Tax Appeals. [Rule *107]

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

RULE 11. JURY TRIALS

RULE 11.1 SELECTION OF JURORS

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

RULE 11.2 CONDUCT OF A TRIAL

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

Philadelphia Local Rule 11.2.A. Trial Judge. [Rule *110]

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

Philadelphia Local Rule 11.2.B. Motions After Trial. [Rule *112.1]

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

RULE 12. SPECIAL PETITIONS

RULE 12.1 FAMILY EXEMPTION

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

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

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

(3) a description of the property claimed; and

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

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

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

Philadelphia Local Rule 12.1.A. Family Exemption. Additional Requirements.

[Rule *121.1]

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

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

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

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

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

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

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

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

(a) a copy of the will;

(b) a copy of the inventory showing the valuation of the property claimed, when the exemption is claimed from personal property, and the gross estate exceeds the amount of the family exemption provided by law; and

(c) a verified return of notice.

Philadelphia Local Rule 12.1.B. When Appraisal Unnecessary. [Rule *121.2]

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

(1) from personal property and the gross value of the decedent's estate does not exceed the amount of the family exemption provided by law; or

(2) wholly or in part from real estate, if all parties in interest agree on the valuation.

Philadelphia Local Rule 12.1.C. Allowance. [Rule *121.3]

(1) Prior to Audit.

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

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

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

Philadelphia Local Rule 12.1.D. Voluntary Distribution. [Rule *121.4]

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

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

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

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

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

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

RULE 12.2 ALLOWANCE TO SURVIVING SPOUSE OF INTESTATE

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

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

(2) a description of the real estate; and

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

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising

or giving notice thereof shall be prescribed by local rules.

(c) The court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory allowance without compliance with the procedure outlined in subparagraphs (a) and (b) of this rule if all parties in interest agree in writing that the surviving spouse is entitled to the allowance and to the valuation at which the real estate is to be awarded.

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

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

- (a) the information required in a petition for family exemption under Rule 12.1.A., as far as appropriate;
- (b) the death of decedent, intestate, without issue or adopted children; the names, addresses, and the relationship of those interested as next of kin; and
- (c) that ten (10) days' prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.

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

- (a) if a ceremonial marriage occurred, a certified copy of the marriage certificate;
- (b) if there were prior marriages by either spouse, a copy of the death certificate, if dissolved by death; or a certified copy of the decree of divorce by which such marriages were dissolved;
- (c) a copy of the inventory and appraisement; and
- (d) a verified return of notice.

Philadelphia Local Rule 12.2.B. Conclusiveness of Averments. [Rule *122.2]

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

Philadelphia Local Rule 12.2.C. Appraisal. Notice. Confirmation. [Rule *122.3]

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

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

(3) Confirmation and Setting Apart of Allowance. In the absence of objection, at the expiration of ten (10) days after giving of notice under paragraph (2), and after the last appearance of the advertisement, if any, upon submission of proof of notice, the Court may enter a decree.

Probate Section Comment: The Rule recognizes the present practice of making the award of real estate in satisfaction of the spouse's allowance a part of the distribution decree when a Court accounting is filed. While this Rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of Section 3546 of

the Probate, Estates and Fiduciaries Code, it, nevertheless, is considered advisable to preserve it in its altered form as a guide when it is to be employed.

RULE 12.3 REVOCATION, VACATING AND EXTENSION OF TIME FOR FILING OF SURVIVING SPOUSE'S ELECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the name and address of the petitioner, and the petitioner's residence on the date of the decedent's death;

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

(d) whether the decedent died testate or intestate; if letters were granted, where, to whom and when they were granted;

(e) the approximate value of all assets which may be subject to the spouse's election, to the extent known by petitioner;

- (f) the date of the filing of the election, and the date and method of notice to the decedent's personal representative of the filing;
- (g) a description of the party or parties against whom relief is sought, including whether each party is a fiduciary, custodian or obligor, and whether each is the original beneficial recipient or a successive donee to the property or its proceeds;
- (h) a description of the relief sought, describing the specific acts to be performed or the extent of the personal liability to be imposed;
- (i) any other information relevant to the disposition of the petition; and
- (j) a prayer for a citation to show cause why the relief sought should not be granted, or if no citation is required, a prayer for the relief requested.

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

- (a) a copy of the decedent's will, deed of trust or other instrument of conveyance (if any) pertaining to the property with respect to which relief is requested; and
- (b) consents to the relief requested signed by those parties in interest who have consented thereto and who have not jointed in the petition.

(3) Service of Citation and Notice.

(a) Petitions Requiring the Issuance of a Citation. (i) In accordance with Rule 3.5.B., service of the citation shall be made on all parties to whom the citation is directed, and the original citation with proof of service endorsed or annexed thereon shall be filed with the Clerk; (ii) Petitioner shall give written notice to all other parties in interest who have neither joined in the petition nor consented to the requested relief by letter and copy of citation mailed to all such parties at least twenty (20) days prior to the return date of the citation; (iii) Counsel to petitioner shall file with the Clerk, prior to the return date of the citation, a certification of mailing which shall list the names and addresses of all parties to whom notice was so given, including a copy of the notice given.

(b) Notice in the Case of Petitions Not Requiring the Issuance of a Citation. In accordance with Rule 1.2.A., petitioner shall give written notice of the intended presentation of the petition to the Court and shall attach to the petition a certification in the form required by Rule 1.2.A.(2)(b).

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

- (a) In the case of petition requiring the issuance of a citation, a preliminary decree in approved form awarding a citation as requested in the petition; and
- (b) A final decree in approved form providing for the relief requested. In appropriate cases, the decree will fix the amount of security, if any, to be entered.

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

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

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

- (a) the same information which is required under paragraphs (1)(a) through (d) under Rule 12.3.A.;
- (b) if an election has been filed, the date of the filing, and the date and method of notice to the

decedent's personal representative of the filing;

(c) an averment that the property whose transfer or payment the petitioner seeks to restrain is property which may be subject to election as set forth in Section 2203 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 2203) and a detailed description of the property to the extent known by the petitioner, which shall include the following: (i) the nature of the property and its approximate fair market value; (ii) the names of all persons holding title to the property at the time of the decedent's death and at the time of presenting the petition; (iii) the identification of any fiduciary having an interest in the property; and (iv) the nature of the decedent's interest in the property and the date of any transfers of any interest held by the decedent in the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

[Rule *123.3]

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

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

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

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

(d) a prayer for the extension requested.

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

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

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

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

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

RULE 12.4 APPOINTMENT OF A GUARDIAN AD LITEM OR A TRUSTEE AD LITEM

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

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

(c) *The petition shall set forth*

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

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

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

Philadelphia Local Rule 12.4.A. Appointment. Additional Requirements. [Rule *124.1]

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

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

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

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

(i) the name, address, and, if applicable, date of birth of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and the relationship to the decedent or settlor; (ii) the interest of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and the provisions of any instrument creating such interest; (iii) the name, address and interest of each sui juris party in interest who has a similar interest to the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person and whose interest is not adverse to such person; (iv) a statement why the accountant or other party in interest believes that such party in interest is qualified to represent the interest of the minor, incapacitated person, absentee, presumed decedent or unborn or unascertained person; and (v) a statement that notice of the audit or hearing has been given to such party in interest so identified as representative of the minor, incapacitated person, absentee, presumed decedent or unascertained person.

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

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

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

- (a) a statement of when, how and why the guardian ad litem and/or trustee ad litem was appointed;
- (b) the identity and interests of persons on whose behalf the guardian ad litem and/or trustee ad litem has been appointed;
- (c) a review of the account, if applicable;
- (d) a statement of the legal and other issues involved and the position of the guardian ad litem and/or trustee ad litem with respect thereto; and
- (e) such other information as the guardian ad litem and/or trustee ad litem deems relevant. The report may also contain a request by the guardian ad litem and/or trustee ad litem for compensation.

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

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

Philadelphia Local Rule 12.4.B. Compensation. [Rule *124.2]

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

RULE 12.5 APPOINTMENT OF A GUARDIAN FOR THE ESTATE OR PERSON OF A MINOR

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

(b) The petition shall set forth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following exhibits shall be attached to the petition:

(1) Consent of Parents or Person in Loco Parentis. Written consent of the parents or surviving parent of the minor to the appointment of a guardian for his or her estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or

of the superintendent or other official in charge of the institution having custody of the minor, and in all cases of a married minor, of such minor's spouse. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the petition as the Court may direct.

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

(a) his or her business, and domicile;

(b) that he or she is a citizen of the United States, able to speak, read and write the English language; and

(c) if the minor and proposed guardian reside in the same household, that it is not the intention of the guardian to apply for an allowance for the support or education of the minor during minority.

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

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

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

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

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

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

(3) Payment at Majority of Minor.

(a) When the gross estate does not exceed \$12,000.00, the decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains majority; upon the joint order of the guardian and the late minor without further order of the Court.

(b) If the deposits or investments of principal under this Rule exceed \$12,000.00 or if, upon subsequent order of the Court, withdrawals have been made from the account during minority, the guardian shall file a petition for the guardian's discharge upon the minor's attaining majority. There shall be attached to the petition: (i) a statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated; (ii) an affidavit by the guardian setting forth that the guardian has received no additional assets belonging to the minor; and that all claims of which the guardian has notice have been paid.

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

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

Philadelphia Local Rule 12.5.D. Minor's Estate. When Guardian Unnecessary.

[Rule *125.4]

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

- (a) authorize payment or delivery thereof to the minor, or the parent or other person maintaining the minor;
- (b) direct the deposit of the money in a restricted account, in the name of a natural guardian of the minor, or of the minor himself; or
- (c) make such provision for the retention or deposit of securities or other assets, as the Court shall deem for the best interests of the minor.

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

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

(1) In General.

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

(b) Petitions. Permissive. Mandatory.

- (i) Permissive. The guardian may petition the Court for approval of periodical payments from income needed from the maintenance, support or education of the minor, the minor's spouse or children.
- (ii) Mandatory. No payments shall be made by the guardian, unless approval by the Court is first obtained, when payment is to be made from principal, except as provided in paragraph (1)(a) of this Rule, or, when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

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

- (a) the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;
- (b) the age and residence of the minor; whether the minor's parents are living; the name of the person with whom the minor resides; and, if married, the name and age of the minor's spouse and children;
- (c) the value of the minor's estate, real and personal, and the net annual income;
- (d) the circumstances of the minor, whether employed or attending school; if the minor's mother or father, or other person charged with the duty of supporting the minor, is living, the financial condition and income of such person and why such person is not discharging his or her duty to support the minor; and whether there is adequate provision for the support and education of the minor, or the minor's spouse and children;
- (e) the date and amount of any previous allowance by the Court, and the name of the Judge who

granted it;

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

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

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

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

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

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

Rule 12.6 Appointment of a Trustee

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

(1) the reason for filing the petition;

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

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

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

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

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

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

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

(1) a copy of the trust instrument;

(2) the written consent of the proposed trustee to act as such; and

(3) the written consent of any co-trustee.

Rule 12.7 Discharge of a Fiduciary and Surety

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

(1) the nature of the fiduciary capacity;

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

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

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

(b) Account Annexed. In lieu of filing and advertising an account, a personal representative who is distributing an estate under the provisions of [Section 3531](#) of the Probate, Estates and Fiduciaries

Code [20 P.S. § 320.731], or the guardian of the estate of a minor who has attained his majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex his account to the petition for discharge with the information required above, modified to indicate any previous distribution and to suggest the proper distribution of any balance on hand.

Philadelphia Local Rule 12.7.A. Discharge of a Fiduciary. Additional Provisions.

[Rule *127.1]

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

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

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

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

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

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

- (a) the facts necessary to confer jurisdiction upon the Court;
- (b) the estimated value of the estate;
- (c) the names of all parties in interest, the nature and extent of their interest, stating who are minors or incapacitated persons, with the names and the record of the appointment of their guardians, committees, or trustees;
- (d) that notice of the presentation of the petition has been given to all parties in interest who are sui juris;
- (e) the name and address of the person proposed as a substitute fiduciary pro tem, if such an appointment is requested; the nature and relationship of such person to the estate or to the parties; and
- (f) such other facts as may be necessary to enable the Court to pass judgment on the matter.

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

RULE 12.8 PARTITION

A petition for partition shall set forth

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

Philadelphia Local Rule 12.8.A. Partition. Additional Provisions. [Rule *128.1]

(1) Account. Auditor. The fiduciary selling real property in a partition proceeding shall file an account after the sale is completed. The Court may dispose of the matter at the audit of the fiduciary's account or may appoint an auditor to ascertain whether there are any liens or other encumbrances on such real property affecting the interest of the parties.

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

RULE 12.9 PUBLIC SALE OF REAL PROPERTY

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

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

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

(1) Contents of Petition.

(a) A petition by a personal representative shall set forth the following information: (i) the name, residence and date of death of the decedent; whether he died testate or intestate; and the date letters were granted to the petitioner; (ii) that the petitioner is not otherwise authorized by statute to sell; or is not authorized to do so by the will; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons; (iii) the total value of the property set forth in the inventory and the date it was filed; (iv) the value at which the real property to be sold was included in the inventory; (v) if bond was entered, the name of the surety and the amount of such bond; (vi) the names and relationships of all parties in interest; whether or not they are sui juris, and, if not, the names of their fiduciaries (if any) and a statement of how they were appointed; and whether or not they join in the petition or consent to the sale; (vii) the street address or other adequate description of the property to be sold, a brief description of the building erected upon the property, the current

occupant of the property and the current tax assessment; (viii) a list of all liens of record known to the petitioner; and (ix) sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) A petition by a trustee shall set forth the following information: (i) how title was acquired, stating the date and place of probate of the will or recording of the deed to the trustee; (ii) a recital of the relevant provisions of the will or deed of trust pertaining to the real property to be sold and a recital of the history of the trust; (iii) that the petitioner is not otherwise authorized to sell by statute; or is not authorized by the deed of trust; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons; (iv) the total approximate current value of property held in trust; and (v) the same information as is required under subparagraphs (a)(v) through (ix) in a petition by a personal representative.

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

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

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

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

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

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

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

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

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

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

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

RULE 12.10. PRIVATE SALE OF REAL PROPERTY OR OPTIONS THEREFOR

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

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

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

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

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

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

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

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

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

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

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

(c) a copy of the agreement of sale;

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

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

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

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

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

(1) Contents of Petition.

(a) In a sale, whether public or private, of real property without benefit of an order of Court directing or authorizing such sale, where a personal representative or trustee was required to give a bond, a petition by a personal representative or trustee shall set forth the following information: (i) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; and the date letters were granted to the petitioner; (ii) the total value of all assets set forth in the inventory; (iii) the value at which the real property to be sold was included in the inventory; (iv) if bond was entered, the name of the surety and the amount of such bond; (v) the street address or other adequate description of the property to be sold; a brief description of the building erected on the property; the current occupant of the property; and the current tax assessment; (vi) the name and address of the purchaser and a brief recital of the terms of the sale; (vii) the estimated net proceeds which petitioner will receive at the time of settlement; (viii) a list of all liens of record known to petitioner; (ix) the names and relationships of all parties in interest; whether or not they are sui juris, and, if not, the names of their fiduciaries and a statement of how they were appointed; and whether or not they join in the petition or consent to the sale; and (x) sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) A petition by a trustee shall set forth the following information: (i) how title was acquired; (ii) a recital of the relevant provisions of the will or deed of trust pertaining to the real property to be sold; (iii) the estimated value of all assets currently held in trust; and (iv) the same information required under paragraph (a) (iv) through (x) in a petition by a personal representative.

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

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

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

(b) a copy of the agreement of sale;

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

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

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

(a) in counsel's opinion the estate is solvent; and

(b) counsel knows of no objection to the sale by a party in interest. In the absence of such certification, an appraisal by a qualified appraiser shall be presented with the petition. The Court may order the appointment of an appraiser in any case where it deems it appropriate or necessary for the disposition of the petition.

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

Probate Section Comments:

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

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

(3) Petition by a Guardian of an Incapacitated Person's Estate: A guardian of an incapacitated person's estate does not have the power to sell real estate without Court approval.

(4) With respect to petitions to sell real property under the Inalienable Property Act (Section 8301 et. seq. of the Probate, Estates and Fiduciaries Code (20 Pa.C.S. § 8301 et. seq.)), see Rules 12.12.A. to 12.12.H.

(5) The procedure and the information required for a petition for the private sale of real property to pay debts of a decedent shall conform, as nearly as practicable, to the procedure and information required of a petition presented under Rule 12.10.A.

RULE 12.11 MORTGAGE OR LEASE OF REAL PROPERTY

A petition to mortgage or lease real property shall set forth

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

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

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

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

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

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

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

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

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

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

RULE 12.12 INALIENABLE PROPERTY

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

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

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

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

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

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

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

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

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

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

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

law which may confer an immunity or exemption from sale or alienation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

paragraphs:

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

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

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

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

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

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

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

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

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

(1) **Contents of Petition.** A petition by a fiduciary to mortgage real property, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 8301 et seq.), shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed loan should be approved.

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

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

(1) Fiduciaries whose appointments originated in this county shall obtain leave of this Court to petition the Court of another county of this Commonwealth, under Chapter 83 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 8301 et seq.), to sell or mortgage real property located in that county. Such leave may be obtained by petition to this Court setting forth briefly the substantial averments of a petition for the sale or mortgage of real property.

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

RULE 12.13 DESIGNATION OF A SUCCESSOR CUSTODIAN

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

Note: The Pennsylvania Uniform Transfers to Minors, Act is now, [Chapter 53](#) of the Probate, Estates and Fiduciaries Code.

RULE 12.14 CONFIRMATION OF APPOINTMENT

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

(1) the reason for filing the petition; and

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

(b) There shall be attached to the petition

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

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

RULE 12.15 CEMETERY COMPANIES AND NON-PROFIT CORPORATIONS INCORPORATED FOR CHARITABLE PURPOSES.

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

Philadelphia Local Rule 12.16.A. Petition for Review. [Rule *135]

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

RULE 13. DISTRIBUTION-SPECIAL SITUATIONS

RULE 13.1 REPRESENTATION BY COUNSEL

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

RULE 13.2 EXISTENCE AND IDENTITY

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

RULE 13.3 REPORT BY FIDUCIARY

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

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

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

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

- (a)** the nature of the investigation made to locate the heirs of the decedent, in complete detail; and
- (b)** in cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain. The term “an investigation”, as used in this Rule, shall include inquiry of or as to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; labor union membership; places of employment; social, fraternal, or beneficial organizations; insurance records; church membership; school records; social security, Veterans’ Administration, or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

(2) Non-Resident Distributee. If the fiduciary requests the Court to withhold distribution to a non-

resident distributee, he shall submit a written report at the audit, verified by the affidavit of the fiduciary or counsel for the fiduciary, in which shall be set forth:

- (a) the relationship of the distributee to the decedent, and any available information concerning the distributee's present whereabouts;
- (b) in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and
- (c) the reasons for the request that distribution be withheld, and the suggested manner of withholding.

RULE 14. GUARDIANSHIP OF INCAPACITATED PERSONS

RULE 14.1 LOCAL RULES

The practice and procedure with respect to incapacitated persons' shall be as prescribed by local rules, which shall not be inconsistent with Rules 14.2-14.5.

RULE 14.2 ADJUDICATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN OF THE PERSON AND/OR ESTATE OF AN INCAPACITATED PERSON

A petition to adjudicate incapacity shall meet all requirements set forth at 20 Pa.C.S. § 5511. A citation and notice in the form approved by the Supreme Court shall be attached to and served with a petition. The procedure for determination of incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5512 and 5512.1.

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

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

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

alleged incapacitated person;

(i) The steps taken to find less restrictive alternatives;

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

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

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

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

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

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

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

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

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

The preliminary decree shall also restate the requirements set forth in Rule 14.2.B.(4), (5) and (6)..(b) A final decree adjudicating incapacity, appointing a limited or plenary guardian of the person and/or estate, directing the filing of an annual report and fixing security, if any.

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

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

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

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

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

Philadelphia Local Rule 14.2.B. Practice and Procedure. In General.

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

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

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

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

(a) Personal service on the alleged incapacitated person shall be made by petitioner, or petitioner's representative, no less than twenty (20) days before the hearing. At the time of service, the petition and citation shall be explained to the maximum extent possible in language the alleged incapacitated person will be most likely to understand and the petition and the citation shall be left with him or her. The form of notice provided to the alleged incapacitated person shall be in large type and simple language, indicate the purpose and seriousness of the proceedings and the rights that could be lost as a result of the proceedings. Such notice shall include: (i) The date, time and place of hearing; (ii) An explanation of all rights of the alleged incapacitated person (including the right to counsel, to have an independent evaluation, to have the cost of counsel and of such independent evaluation reimbursed by the Commonwealth if the alleged incapacitated person is unable to pay); and (iii) A statement that if the alleged incapacitated person does not attend the hearing or does not reply to the petition, the Court may assume that there is no objection to the petition and grant the requested relief.

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

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

(5) Proof of Service and of Notice.

(a) The following shall be submitted at a hearing for determination of incapacity: (i) An affidavit of service of the petition and citation on the alleged incapacitated person, attached to or endorsed upon the original citation, reciting that the petition and citation were explained to the maximum extent possible in language likely to be understood by the alleged incapacitated person and that a copy of each was left with him or her; and (ii) An affidavit reciting the manner of giving notice of the hearing and identifying those persons to whom such notice was given as required in Rule 14.2.B.(4).

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

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

(a) The Court is satisfied, upon the deposition or testimony of or sworn statement by a physician

or licensed psychologist, that the physical or mental condition of the alleged incapacitated person would be harmed by his or her presence; or

(b) It is impossible for the alleged incapacitated person to be present because of his or her absence from the Commonwealth, in which case it shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem. The Court may, in its discretion, hold a closed hearing or a hearing without a jury, subject to the right of the alleged incapacitated person or his or her counsel to demand an open hearing, or a hearing with a jury. The hearing may be held at such location as the Court shall direct, including the alleged incapacitated person's residence.

(7) Emergency Proceedings.

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

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

(c) Duration of Emergency Guardianship: (i) Person: An emergency order appointing an emergency guardian of the person may be in effect for up to seventy-two (72) hours. If the emergency continues, then, upon application to the Hearing Judge, the emergency order may be extended for no more than twenty (20) days from the expiration of the initial emergency order. After the expiration of the emergency order or any extension, a full guardianship proceeding must be instituted pursuant to section 5511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. § 5511). (ii) Estate: An emergency order appointing an emergency guardian of the estate shall not exceed thirty (30) days. After thirty (30) days, a full guardianship proceeding must be initiated pursuant to 'S511 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. § 5511).

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

(8) Evidence of Incapacity.

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

(b) Independent Evaluation: If, pursuant to section 5511(d) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. § 5511(d)), the Hearing Judge upon his or her own motion or on petition by the alleged incapacitated person for cause shown, shall order an independent evaluation to meet the requirements of section 5518 of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. § 5518): (1) the evaluator shall file a report of findings with the Hearing Judge before the hearing and shall send a copy thereof to each counsel of record and to such other interested parties or persons as the Court may direct; (2) the Hearing Judge shall determine the charges for the independent evaluation and the persons responsible for the payment and shall give due consideration to any evaluator nominated by the alleged incapacitated person.

(9) Filing of An Inventory. Within three months of the adjudication of incapacity, every guardian of

the estate of an incapacitated person shall file an inventory with the Clerk of the Court in accordance with the provisions of section 5521(b) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C.S. section 5521(b)) upon forms supplied by the Clerk of the Court.

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

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

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

Probate Section Comment: See Rule 3.5.B. for the citation procedure and required manner of service. Notwithstanding paragraph (4), a shorter time period for service may be permitted in connection with petitions for the appointment of an emergency guardian. If the alleged incapacitated person is in a hospital, nursing home or other institution, service must be made by an attorney or authorized personnel of the institution (in accordance with Rule 5.2.A.) and notice of the hearing should be given to the director or other authorized official of such facility. If the alleged incapacitated person is a veteran, notice of the hearing must be given to the Veterans' Administration. Although paragraph (8)(a) permits testimony by deposition, such evidence may not necessarily be considered adequate to establish incapacity. In relying on such evidence, counsel takes the risk that the petition will be denied or that the hearing will be continued so that a witness may be produced to give live testimony.

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

Philadelphia Local Rule 14.2.C. Practice and Procedure. Small Estates.

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

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

Philadelphia Local Rule 14.2.D. Practice and Procedure. Special Petitions.

(1) Allowances.

(a) In General: Expenditures for the maintenance or support of an incapacitated person or for a

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

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

(c) Additional Contents of Petition: In addition to the provisions set forth in Rule 14.2.A.(1), the petition shall also set forth: (i) The name of the guardian, the date of his or her or appointment, the nature of the guardianship of the estate or person (limited or plenary) and the name of the Hearing Judge; (ii) If the petitioner is not a guardian, his or her relationship to the incapacitated person, and, if not related, the nature of his or her interest; (iii) A statement of all previous distributions allowed by the Court since the date of the last Court approved accounting, if any; (iv) An itemized statement of all claims of the incapacitated person's creditors known to petitioner; (v) A statement of the requested distribution and the reasons therefor; and (vi) A prayer for the distribution requested. If the allowance requested will involve a matter which will require annual petitions for substantially similar relief, the petitioner may request the Court to make the grant of the allowance applicable to more than one (1) year, but not to exceed three (3) years, unless otherwise permitted by the Court.

(d) Restrictions Governing Allowance: (i) Except in cases of extreme emergency, requests for allowances will not be approved prior to the filing of the inventory or the last required annual report, as the case may be; (ii) If any portion of the incapacitated person's estate is received from the United States Veterans' Administration or its successor, or any agency of the Commonwealth, notice of the request for allowance shall be given to such agency.

(2) Sales.

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

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

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

(4) Estate plan. In accordance with section 5536(b) of the Pennsylvania Probate, Estates and Fiduciaries Code (20 Pa. C. S. § 5536 (b)), the Court may substitute its judgment for that of the incapacitated person with respect to the incapacitated person's estate planning and other affairs.

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

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

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

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

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

RULE 14.3 REVIEW HEARING

A petition for a review hearing shall set forth:

(1) the date of the adjudication of incapacity;

(2) the name and address of the guardian;

(3) if the incapacitated person has been a patient in a mental hospital, the name of such institution, the date of admission, and the date of discharge;

(4) the present address of the incapacitated person and the name of the person with whom the incapacitated person is living;

(5) the names and addresses of the presumptive adult heirs of the incapacitated person; and

(6) an averment that (i) there has been significant change in the person's capacity; (ii) there has been a change in the need for guardianship services; or (iii) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person.

RULE 14.4 PROCEEDINGS RELATING TO REAL ESTATE

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

RULE 14.5 FORM OF CITATION AND NOTICE

The citation and notice to be attached to and served with a petition for adjudication of incapacity and appointment of guardian shall be substantially in the form approved by the Supreme Court.

Committee Comment--2006: The form of citation and notice formerly found in the body of Rule 14.5 has been moved to the Appendix.

RULE 15. ADOPTIONS

Probate Section Comment: In Philadelphia County, exclusive jurisdiction in adoption [relinquishment and Termination of Parental Rights] matters is vested in the Family Court Division of the Court of Common Pleas.

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

[In Philadelphia County, jurisdiction over matters pursuant to the Abortion Control Act is vested in the Family Court Division of the Court of Common Pleas.]

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RULE 17. SHORT TITLE

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

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

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

SUPREME COURT ORPHANS' COURT FORMS

(Click the link to access the applicable form, or go to <http://www.pacourts.us/Forms/OrphansCourtForms.htm>)

[Index to the Appendix](#)

Audit and Administration Forms

- [OC-01 - Petition for Adjudication - Decedent's Estate](#)
- [OC-02 - Petition for Adjudication - Trust](#)
- [OC-03 - Petition for Adjudication - Guardian of Estate of Incapacitated Person](#)
- [OC-04 - Petition for Adjudication - Guardian of Estate of Minor](#)
- [OC-05 - Petition for Adjudication - Principal's Estate \(Under Power of Attorney\)](#)
- [OC-06 - Notice of Charitable Gift \(In Accordance with Pa. O.C. Rule 5.5\)](#)
- [OC-07 - Notice of Claim \(Filed Pursuant to 20 Pa. C.S. § 3532\)](#)

Guardianship Forms

- [G-01 - Important Notice: Citation with Notice \(Pa. O.C. Rule 14.5\)](#)
- [G-02 - Annual Report - Guardian of Estate](#)
- [G-03 - Annual Report - Guardian of Person](#)
- [G-04 - Guardian's Inventory](#)
- [OC-03 - Petition for Adjudication - Guardian of Estate of Incapacitated Person](#)
- [OC-04 - Petition for Adjudication - Guardian of Estate of Minor](#)

Model Forms of Account

- [National Fiduciary Accounting Standards Project - 1983 Report of Fiduciary Accounting Standards Committee](#)
- [Model Estate Account](#)
- [Model Trust Account](#)
- [Model Charitable Remainder Unitrust Account](#)

Register of Wills Forms

- [RW-01 - Estate Information Sheet](#)
- [RW-02 - Petition for Probate and Grant of Letters](#)
- [RW-03 - Oath of Subscribing Witness\(es\)](#)
- [RW-04 - Oath of Non-subscribing Witness\(es\)](#)
- [RW-05 - Oath of Witness\(es\) to Will Executed by Mark](#)
- [RW-06 - Renunciation](#)
- [RW-07 - Pa. O.C. Rule 5.6 Notice](#)
- [RW-08 - Certification of Notice under Pa. O.C. Rule 5.6\(a\)](#)
- [RW-09 - Estate Inventory](#)
- [RW-10 - Pa. O.C. Rule 6.12 Status Report](#)