

## **ACKNOWLEDGMENT**

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Gilfert M. Mihalich, Orphans' Court Judge  
Patricia K. Masten, Esquire, Judge Mihalich's Law Clerk  
Carol Petrusky, Orphans' Court Review Officer

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\*On behalf of the entire Orphans' Court Rules Committee, I would like to express my sincere thanks to **L. Christian DeDiana, Esquire** of DeBernardo, Antoniono, McCabe and Davis, P.C., for his extraordinary effort, dedication and commitment to this project. He has generously donated substantial time and expertise to undertake the enormous task of serving as the person ultimately responsible for organizing data, overseeing individual committees and supervising the formation and editing of the revised rules. Attorney DeDiana is to be commended for his devotion to defining and improving Orphans' Court Practice in Westmoreland County.

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*Gilfert M. Mihalich,  
Orphans' Court Judge*

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**RULE WO101                      SESSIONS OF COURT AND FILING**

- (a) All proceedings shall be numbered consecutively by the clerk in the order filed, beginning at the first of each year and numbered as of that year, with a prefix number 65 to indicate Westmoreland County in conformity with the Pennsylvania Department of Revenue numbering, *viz.*: 65-96- .
- (b) All papers filed relating to a proceeding shall be filed at the number assigned to the first paper filed in such proceeding.
- (c) In these rules, any reference to the "Orphans' Court" or the "court" shall mean the Orphans' Court Division of the Court of Common Pleas of Westmoreland County, unless otherwise stated.
- (d) In these rules, any reference to the "register" shall mean the Register of Wills of Westmoreland County; any reference to the "clerk" shall mean the Clerk of the Orphans' Court Division of the Court of Common Pleas of Westmoreland County.

EXPLANATORY COMMENTS: In Westmoreland County, the duties of the register of wills and the clerk of the orphans' court division are administered by one office. See 20 Pa. C.S.A. § 901 for the jurisdiction of the register of wills.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO102                      RETURN DAYS, MOTIONS AND AUDITS**

(a) **Return Days**

The return day is the last day to answer or take other legal action with respect to a citation, rule to show cause, or other process, or when a matter may ordinarily next be brought before the court for action.

The return days shall be as fixed by order of court. If no date is fixed, it shall be 20 days from service.

A hearing will not be held on the return day unless specially ordered.

A hearing will be scheduled upon the request or motion of any party after the return day. The request or motion shall be accompanied by a proposed order, which shall provide for appropriate blank spaces for the scheduling of a hearing, the scheduling of a status conference, and a filing deadline for memoranda of law.

(b) **Motions**

All applications, petitions, motions and miscellaneous business should be presented to the court, at such time as the court is available.

(c) **Audit List**

The president judge shall decree and the register of wills shall publish in the Westmoreland Law Journal for three consecutive weeks commencing the second week of November a list of dates of audit, dates of confirmation nisi, and the schedule of filing periods as related to the audit dates for the following year.

The audit list will be called and accounts audited on the dates of audit scheduled by order of court, and will continue until the cases on the list have been heard or other disposition made. All accounts on the audit list filed by an attorney or firm shall be listed together on the audit list.

**CROSS REFERENCES:** A suggested form of Scheduling Order, to be used to schedule a hearing after the expiration of the return date, is included in the volume of approved forms.

**EXPLANATORY COMMENTS:** With regard to paragraph (b), specific arrangements should be made with the judge's chambers to assure the availability of the judge.

If a party fails to answer or otherwise respond to a rule or citation, the court may grant a rule absolute, without conducting a hearing.

**(d) Audit Hearings**

A petition setting forth relevant facts in the format established by the court, together with a proposed Decree of Distribution where applicable, shall be presented to the court. When the petition and proposed Decree are given to the Court Administrator, Orphans' Court Division, prior to the audit day, attendance at the audit by counsel or personal representatives will not be required unless there are specific matters to be addressed at the audit.

Revised February 12, 1998, effective March 30, 1998.

**RULE WO103 ADVERTISEMENTS**

At the time of issuing any letters testamentary or letters of administration, the register shall collect from the personal representative to whom such letters are issued, a sum determined by order of the orphans' court from time to time for payment of costs of publication in the Westmoreland Law Journal and proof of advertising; and, the register shall remit monthly to the Westmoreland Law Journal each sum so collected and shall retain a part of the sum as also determined by order of the orphans' court from time to time and remit the same to the Treasurer of Westmoreland County in due course.

**EXPLANATORY COMMENTS:** In Westmoreland County, the legal periodical is the Westmoreland Law Journal.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO104            DEPOSITORY OF THE COURT**

All moneys directed to be paid into court shall be paid to the clerk. Upon receipt, the clerk shall deposit the moneys in a federally insured, interest-bearing account with the depository designated by the court to the credit of the court, in the particular estate or proceeding to which they may respectively belong. No moneys shall be paid out of court by said depository except on the checks of the clerk, accompanied by a certified copy of the order directing the payment and attested by the seal of the court.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO105            ATTORNEYS**

(a)    **Appearance**

Every attorney employed in any proceeding shall enter an appearance. An attorney's appearance may not be withdrawn without leave of court, unless another attorney has entered or simultaneously enters an appearance, and the change of attorneys does not delay any stage of the proceeding.

(b)    **Attorney as Surety**

An attorney shall not act as surety in any proceeding in this court, except by special leave of court.

CROSS REFERENCES: See Pa. R.C.P. No. 1012(b) regarding withdrawal of appearance and the 1985 explanatory comment thereto.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO106            DISCOVERY**

(a)    The practice relating to depositions, production of documents, perpetuation of testimony and other forms of discovery shall conform to the practice in the Civil Division of the Court of Common Pleas of Westmoreland County.

(b)    Subpoenas shall be issued by the clerk upon request of a party, when a matter is at issue. In all other cases, subpoenas shall be issued only upon order of court.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO107            PLEADINGS**

(a)    **Petitions**

All applications to the court shall be by petition of a party in interest, shall be signed by counsel, verified by the petitioner, and 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 give the court jurisdiction and to justify the relief desired, and any averments specifically required by any Supreme Court Orphans' Court Rule or any rule of this court. The statement shall be divided into paragraphs numbered consecutively, each containing but one material allegation, and shall cite the applicable section of any Act of Assembly relied upon;
- (4) the names of all parties interested, indicating those not sui juris. The names of fiduciaries of parties not sui juris shall be set forth with references to their appointments;
- (5) a prayer for the relief desired.

**(b) Exhibits**

- (1) There shall be attached to the petition as exhibits the originals or copies of all wills, codicils, consents, joinders, approvals, contracts and any other written instruments relied on or pertinent.
- (2) If the petitioner is unable to attach any necessary exhibit, the petitioner shall so state in the petition, with the reason for such inability.

**(c) Verifications**

Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true, upon the signer's personal knowledge or information and belief, and shall be verified. The term "verified", when used in reference to a written statement of fact by the signer, means supported by affidavit or made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities. The verification extends to the authenticity of all exhibits attached to the pleading.

**(d) Decrees and Orders**

In all proceedings, counsel shall prepare and submit a proposed decree or order, specifying the requested action or relief, with the pleading upon which the same is based.

**(e) Copies of Pleadings**

Copies of pleadings shall be certified by counsel to be correct.

**(f) Notice**

- (1) Argument on contested motions or petitions will be heard in Motions Court. The trial judge assigned to a specific case will hear all motions or petitions relating to that case. Motions Court shall be held each Friday at 9:00 a.m.
- (2) The moving party shall serve a copy of the motion or petition and any proposed Order on every other person known to have an interest in the outcome or disposition of the matter and attorneys of record, and give written notice of the time, date and location for presentation, at least 4 days in advance of the date when the presentation is to occur.
- (3) The original motion or petition must be accompanied by a certificate stating that a copy of the motion or petition, proposed Order and written notice has been so furnished. Failure to provide such certificate may result in the court's refusal to hear the motion or petition.
- (4) In the case of an uncontested motion or petition, the certificate shall also state that the motion or petition is, in fact, uncontested or has the consent of all parties.
- (5) Copies of complex motions or petitions may be provided to the Court in advance. If so, the certificate shall also reflect this.

EXPLANATORY COMMENT: If the Order grants leave for action to be taken, the parties should refer to Pa. O.C. Rules 5.3 and 5.4.

**(g) Fees**

All pleadings, accounts, reports and other documents filed with the register or clerk shall be subject to the schedule of filing fees established by the register or clerk from time to time, with the exception of guardians or court appointed attorneys in adoption proceedings, papers filed by the court or the Office of the Court Administrator, or papers filed by any office of Westmoreland County Government. In the event of true financial hardship, an individual that has been appointed as administrator, guardian, trustee, counsel, master, or auditor may file for in *forma pauperis* status by petition or other accepted local procedure, unless otherwise already addressed by order of court, for relief from such fees.

CROSS REFERENCES: See Supreme Court Orphans' Court Rule 3.4, which discusses the form of petitions. The requirements set forth in Rule WO107 expand upon the requirements of Rule 3.4.

See 20 Pa. C.S.A. § 911, which permits unsworn verifications, and Pa. R.C.P. Nos. 1024 and 76, which govern the use of verifications in the civil division.

No notice need be given upon presentation of a petition for citation, as described in Rule WO108. Pennsylvania Supreme Court Orphans'-Court Rule 5 provides detailed procedures regarding notice.

Adopted February 1, 1996, effective May 1, 1996. Revised December 3, 2003, effective January 19, 2004. Rule WO107(f) rescinded November 4, 2005; New Rule WO107(f) and Comment adopted November 4, 2005, effective December 25, 2005.

**RULE WO108                    PERSONAL JURISDICTION**

**(a)       Citations**

When jurisdiction over a person is sought, it shall be obtained by citation. Upon petition of any party in interest, the court shall issue an order directing the clerk to issue a citation. The citation shall direct the party named therein to file a complete verified answer to the averments of the petition on or before the day fixed by the court, and to show cause as the order of the court shall provide.

**(b)       Service of Petition with Citation**

A copy of the petition shall be served with the citation unless service thereof is authorized and made by publication.

CROSS REFERENCES: See Supreme Court Orphans' Court Rule 3.5, which provides for the citation as the means for acquiring personal jurisdiction over a person.

EXPLANATORY COMMENTS: In some situations, the court already has jurisdiction over parties, and a citation is not necessary. For example, the court generally maintains continuing jurisdiction over personal representatives and guardians.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO109                    EXCEPTIONS**

(a) Upon filing exceptions, the moving party shall present to the court a proposed order, which shall provide for appropriate blank spaces for the scheduling of the filing of briefs and argument.

(b) If not otherwise established by the court, a party filing exceptions must file a brief at least 10 days before the date scheduled for oral arguments. Opposing counsel must file a responsive brief within 5 days of service of opposing counsel's brief. The briefs shall contain, inter alia, a concise statement of issues. A party who has not timely filed a brief may be denied oral argument. Issues not briefed shall be deemed waived.

Repealed April 9, 2001; New Rule WO109 adopted April 9, 2001, effective May 27, 2001.

**RULE WO110                    BILL OF COSTS**

(a) The following items shall be considered as record costs in a proceeding:

- (1) Fees paid for filing pleadings;
- (2) Fees paid for service of pleadings;

- (3) Fees paid to court reporters for the cost of original and/or no more than one copy of depositions;
  - (4) Any other costs specifically permitted by statute or supreme court rules; and
  - (5) If the case has been tried, fees statutorily permitted to witnesses for per diem attendance and mileage.
- (b) A bill of costs must be filed with the clerk, along with an affidavit of service on the opposing party or his counsel of record, within 10 days of the entry of a verdict by a jury, or a final order or decree by the court. The bill of costs may include the items listed in paragraph (a) of this rule.
- (c) In cases where an executor, administrator, guardian or trustee has acted in good faith defending the estate against a claim, costs and fees may be allowed out of the estate, even though the claim is allowed.
- (d) Exceptions specifying those items or amounts of costs to which a party has objections must be filed within 10 days of receipt of the bill of costs.
- (e) The court will enter an order specifying allowable costs.

CROSS REFERENCES: Paragraph (c) is taken from the former Rule WO9(c). The remaining paragraphs are taken from Rule W609 of the Westmoreland County Rules of Civil Procedure.

Adopted February 1, 1996, effective May 1, 1996.

#### **RULE WO111            ENFORCEMENT OF DECREES**

Decrees of the orphans' court may be enforced through further proceedings in the orphans' court, or, where appropriate, through the office of the prothonotary.

CROSS REFERENCES: See 20 Pa. C.S.A. § 781 for methods of enforcement of orders and decrees of the orphans' court.

EXPLANATORY COMMENTS: Judgments for money damages are often enforced through the office of the prothonotary.

Adopted February 1, 1996, effective May 1, 1996.

#### **RULE WO112            APPEALS AND TRANSFERS TO THE ORPHANS' COURT**

##### **(a)    Petition and Appeal from Register**

- (1) An appeal to the court from any judicial act, proceeding or decree of the register shall be effected by filing a notice of appeal with the clerk. The notice of appeal shall contain the caption, name of the appellant, and a reference to the judicial act, proceeding or decree appealed from, and shall be signed by the appellant or counsel. A copy of the notice of appeal shall be

mailed to or personally delivered to all parties appearing before the register or their counsel, and a proof of notice shall be filed with the clerk within 5 days.

- (2) Within 30 days after filing the notice of appeal, the appellant shall present to the court a petition complying with Rule WO107, including a reference to the notice of appeal, and whether bond was required or filed.

Upon filing of the petition, the court will award a citation to all interested parties, including the register, to show cause why the appeal should not be sustained and the decision complained of set aside and, in cases where a jury trial has been requested, why the disputed issue of fact should not be submitted to a jury.

- (3) This section shall not apply to appeals for inheritance tax purposes nor to appeals specially regulated by law.

(b) **Certified Cases**

When a certification of a dispute has been made by the register to the court under Section 907 of the PEF Code, the court will determine whether pleadings will be required.

CROSS REFERENCES: The time period for filing appeals from decrees of the register is a matter of statutory law, under 20 Pa. C.S.A. § 908.

EXPLANATORY COMMENTS: An appeal from a decree of the register is a two-step process. The first step involves the filing of a notice of appeal. The second step is the filing of a petition within 30 days after filing the notice of appeal. Both steps are required for the perfection of an appeal from a decree of the register.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO113 FIDUCIARIES TO BE APPOINTED**

When a petition discloses that minors, unborn or unascertained persons, incapacitated persons, absentees, or presumed decedents or others not sui juris having interests are necessary parties and are without fiduciaries, an order will be made directing that the petition be filed, provided that the petition contains the names and ages of any minor children, the names and addresses of their parents, parent or persons with whom they reside, and all other facts required by Supreme Court Orphans' Court Rules Section 12, Rule 4. If it appears that a fiduciary should be appointed to represent any such person, the court will direct the petitioner to notify minors over 14 years of age, the next of kin or next friends of minors under 14 years of age, and the next of kin of incapacitated persons, that unless a fiduciary is appointed for them within 10 days after service of the notice, the court, on petition of proper parties or on its own motion, may appoint a guardian or a trustee ad litem to represent their interests.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO114            TEMPORARY FIDUCIARIES**

When a fiduciary of an estate under the jurisdiction of the court is in military service, in other government service, in a position of conflicting interest or in any situation where, for a temporary period, it may not be in the best interests of the estate for the fiduciary to act, a co-fiduciary or co-fiduciaries, if any, may be authorized to exercise all the powers of such fiduciary or the court may appoint a substitute fiduciary pro tem.

CROSS REFERENCES: See Sections 4301-4306 of the PEF Code.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO115            RECORDS**

**(a)    Withdrawal of Records**

No original wills shall be withdrawn from the office of the clerk or from the court without a written order of the court. No other record shall be withdrawn from the office of the clerk without a written order of the clerk or assistant clerk, which order shall limit the time for its return. The clerk shall report to the court any failure to return the same after the time limit so fixed has expired.

**(b)    Record Books - Clerk of the Orphans' Court**

The clerk shall keep the following books:

- (1) a book called the Orphans' Court Docket in which shall be set forth all proceedings of this court;
- (2) a book called the Accounts Docket in which all accounts (excepting exhibits) of executors, administrators, guardians and trustees shall be transcribed in summary form;
- (3) a book called the Distribution Docket in which shall be copied at length all distributions made by the court and all auditor's distributions when finally confirmed;
- (4) a book called the Marriage License Docket in which shall be kept a memorandum of all marriage licenses granted, the return thereto, showing the number of the license, the date thereof, the date of marriage, by whom married, etc.;
- (5) a book called the Minute Book in which shall be entered the sittings of the court and a brief memorandum of all matters brought before it, with the action of the court thereon, which entries shall be made at the time of each sitting of the court;

- (6) a book called Delayed Registration of Birth Records in which shall be set forth all applications for delayed registration of birth records and the decrees of the court thereon;
- (7) a book called the Adoption Docket in which shall be set forth all reports of intent to adopt, adoptions, voluntary and involuntary relinquishments and the decrees of the court thereon, and the Adoption Docket shall be impounded along with all other adoption matters.

(c) **Record Books - Register of Wills**

The register of wills and ex-officio clerk of the orphans' court shall keep the following books:

- (1) a book known as the Memorandum Book in which shall be entered the names of decedent's and minor's estates and all other matters requiring the designation of a new number and term, together with a brief note of the subject matter of the entry;
- (2) a book called the Administration Docket in which shall be noted the issuing of letters of administration, and accounts, and elections to take under or against wills;
- (3) a book called the Inventory and Appraisalment Docket in which shall be set out the total amount of the personal property set out in the inventory, together with a brief reference to each tract of real estate and valuation thereof, as set out in all inventories filed in the register of wills office or the clerk of courts office, except those noted or set out in other dockets or books in either of those offices;
- (4) a book called the Will Book in which shall be transcribed at length all wills probated, together with the date of death and the name of such executors as have qualified;
- (5) a book called Transfer Inheritance Tax Docket in which shall be set forth a description in full of the real estate of decedent and totals of personal property and list of debts, together with notations as to assessment and payment of tax.

(d) **Indexes**

The clerk or register of wills shall keep a proper index for each docket whenever the same may be required, together with a general index.

(e) **Endorsement of Filing Date**

The clerk or register of wills shall endorse upon all papers filed the date of filing, which date shall be conclusive upon all parties, unless changed by order of court because of error or other cause showing the same to be incorrect.

CROSS REFERENCES: This Rule is taken from prior Rule W018.

EXPLANATORY COMMENTS: The books required in this rule may be kept electronically.

Adopted February 1, 1996, effective May 1, 1996.

**RULE W0116            FORMAT OF PLEADINGS AND DOCUMENTS**

- (a) All originals of pleadings and forms of decrees shall be typed.
- (b) Pleadings or documents submitted for filing must be clear and unblurred.
- (c) When submitted to the court or the clerk, documents which are handwritten or not readily legible shall be accompanied by a typed copy.
- (d) All documents in a foreign language shall be translated into English. The translation shall be typed and a certification of accurate translation shall be attached.
- (e) "Typed" means typewritten or machine printed in black type on white paper and double spaced. Unconventional fonts shall be avoided.
- (f) "Documents" shall include all written material, including but not limited to wills, trusts, powers of attorney, contracts and leases.
- (g) Prior to granting letters testamentary or any form of letters of administration, the register shall require the petitioner to supply a certified original death certificate, evidencing the death of the person for whom such letters are being sought.

EXPLANATORY COMMENTS: If a holographic will is presented for probate, there must be offered with it a typewritten copy of the original will. This is known as a "copy fair."

Unconventional fonts include script or cursive style fonts.

Adopted February 1, 1996, effective May 1, 1996. Revised December 3, 2003, effective January 19, 2004.

**RULE W0117            ACCOUNTS**

- (a) Accounts shall conform with 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. Accounts shall be stated on 8-1/2 x 11 paper, fastened at the top and the pages shall be numbered consecutively.

CROSS REFERENCES: See Supreme Court Orphans' Court Rule 6.1.

- (b) **Transcribing**

The clerk, when transcribing into account books such accounts as are required by law to be transcribed, shall omit from the record all schedules attached to accounts, description of unconverted real estate, testimony and documents accompanying the same and auditor's reports, unless otherwise directed by special order of the court, provided that accounts of guardians and trustees which are not final shall be transcribed in full.

(c) **Notice to Co-Fiduciaries**

When there are co-fiduciaries, actual notice of filing of an account and of audit must be given to those who do not join in the accounting.

(d) **Signing - Verification**

All accounts shall be signed and verified by the fiduciaries. In the first account filed in a decedent's estate, the verification shall include a statement that 4 months have elapsed from the date of the first complete advertisement of the original grant of letters (except where a personal representative has been directed by the court to file an account prior to that time). All fiduciaries must verify that the disbursements claimed have been made or will be made to the proper parties, and that the account as stated is true and correct. The verification must be attached after the last schedule.

(e) **Filing Time**

To be placed on the audit list, accounts shall be filed in the office of the clerk no later than the last day scheduled by the court for the filing of accounts in any given month.

(f) **Notice**

Notice of the filing of the account, as well as a copy of the account, shall be sent to all interested parties at least 20 days prior to the date set for audit. If the court finds that notice and a copy of the account have not been timely given, the audit may be continued to the next audit date.

CROSS REFERENCES: 20 Pa. C.S.A. §3503; Pennsylvania Orphans' Court Rule 6.3

EXPLANATORY COMMENT: "Interested parties" includes all beneficiaries, heirs and creditors who have not received payment in full, and any other persons who are likely to be affected by the adjudication. It is usually not necessary to notify specific legatees who have received satisfaction in full of their legacies prior to the filing of the account, and creditors who have been paid in full.

(g) **Confirmation**

All accounts will be confirmed nisi as of course on the last court day which is at least 10 days prior to the date established for audit.

EXPLANATORY COMMENT: Audits have traditionally been held on Tuesdays. Accounts scheduled for audit on Tuesday will be confirmed nisi on the Friday which is eleven days prior to the audit.

**(h) Objections**

Objections to an account must be filed with the clerk and submitted to the court in writing on or before the date and time set for audit. A copy of the objections shall be provided to counsel for the estate, or the personal representative where there is no counsel of record, and to every other party who has entered an appearance and who may be affected by the objection.

Revised February 12, 1998, effective March 30, 1998. Rule WO117(f) and Rule WO117(h) rescinded November 4, 2005; New Rule WO117(f) and WO117(h) adopted November 4, 2005, effective December 25, 2005.

**RULE WO118 CHANGE OF ADDRESS**

A personal representative of a decedent's estate or a guardian of the estate of a minor or an incapacitated person shall file with the Register of Wills of Westmoreland County any change of address. Notice or service to the last recorded address shall be deemed notice or service to the said personal representative or guardian.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO119 APPROVED FORMS**

The court shall periodically file a decree listing approved forms which may be utilized in practice before the court. A complete set of these approved forms shall be kept in the clerk's office.

CROSS REFERENCES: The Westmoreland Bar Association is publishing a volume of approved forms as a companion volume to these Rules.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO201 APPLICATION FOR JUDICIAL AUTHORIZATION OF AN ABORTION**

- (a) Whenever the term "Application" is used in the Abortion sections of these rules, it shall refer to an Application for Judicial Authorization of an Abortion as set forth in (c) below.
- (b) An Application may be submitted by a minor, by a guardian on behalf of an incapacitated person, or by a proposed guardian on behalf of an alleged incapacitated person.

- (c) An Application and supporting documents shall be substantially in the form available from the judge of the orphans' court, and the form of verification to be signed by the applicant shall be substantially in the form set forth in Supreme Court Orphans' Court Rule No. 16.12.
- (d) The Application and supporting documents shall be available from the judge of the orphans' court.
- (e) The Application shall be submitted to, and filed directly with, the judge of the orphans' court for scheduling.
- (f) The Verification of Medical Provider required by the Abortion Control Act shall be attached to the Application or shall be delivered to the court no later than 24 hours before hearing scheduled upon the Application.
- (g) The date of filing of the Application for purposes of compliance with the Abortion Control Act shall be deemed to be the date when the Application is first presented to the judge of the orphans' court for scheduling.

CROSS REFERENCES: The Abortion Control Act is set forth at 18 Pa. C.S.A. § 3200, et seq. See Supreme Court Orphans' Court Rule No. 16.10 and No. 16.11. See Pennsylvania Orphans' Court Rule No. 16.12.

See Forms Abortion-1 and Abortion-2 for suggested forms of Application and Verification of Medical Provider.

Adopted February 1, 1996, effective May 1, 1996.

## **RULE WO202            CONFIDENTIALITY**

- (a) All proceedings relating to an Application shall be confidential.
- (b) Upon the initial filing of the Application, the court shall review the Application and note any information identifying the pregnant woman (such as name and address and social security number) and shall then seal the Application in an envelope, denoting on the face thereof a caption using the initials of the pregnant woman and writing an order on the face of the envelope, which shall indicate the contents of the envelope (for example, Application for Judicial Authorization of an Abortion, Verification of Applicant, Verification of Medical Provider, etc.). The court shall direct that the record (Application, pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material to be maintained, which shall include its own findings and conclusions) be sealed. The order shall specifically state that the envelope shall remain sealed and confidential.
- (c) The clerk of the orphans' court shall docket the case by using a docket number only. Neither the name nor the initials of the pregnant woman shall appear anywhere upon the docket. All subsequent pleadings and exhibits shall be similarly sealed and maintained. A final decree in the matter, using only the initials of the pregnant

woman, may appear on the face of a sealed envelope, but the Findings of Fact and Memorandum Opinion of the court shall be sealed.

- (d) The identity of the pregnant woman shall not be disclosed in any report or decision of the proceeding.
- (e) All persons shall be excluded from hearings upon the Application except the pregnant woman, her attorney, her guardian ad litem, her proposed guardian (if she is alleged to be incapacitated), the proposed guardian's attorney, and witnesses of the applicant or of the applicant's attorney and guardian ad litem, or other individuals as directed by the court.
- (f) The judge hearing the Application shall direct all persons present at any hearing or proceeding upon the Application not to disclose any information regarding the case.

CROSS REFERENCES: See Supreme Court Orphans' Court Rule No. 16.2, Rule No. 16.6 and the Explanatory Comment accompanying Rule No. 16.1.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO203                    CONSENT TO AN ABORTION ON BEHALF OF AN INCAPACITATED PERSON**

- (a) Whenever a person seeks judicial consent to an abortion on behalf of an alleged incapacitated person, a Petition for Guardianship of the pregnant woman shall be filed either before an Application is filed or simultaneously therewith.
- (b) A Petition for Guardianship or consolidated Petition for Guardianship and Application, filed on behalf of an incapacitated pregnant woman, by a petitioner seeking authority to consent to an abortion on behalf of the pregnant woman, shall maintain the anonymity of the pregnant woman, and confidentiality shall be maintained as set forth in Rule WO202. If a Petition for Guardianship alleges that the alleged incapacitated person is in need of a guardian for the purpose of authorizing the guardian to consent to an abortion that would be in the best interests of the incapacitated person, the Petition for Guardianship shall contain all of the information required by Chapter 55 of the Probate, Estates & Fiduciaries Code and by the abortion sections of these rules.
- (c) The court will conduct proceedings to determine the capacity of the pregnant woman in the same manner as provided for in Chapter 55 of the Probate, Estates & Fiduciaries Code, and will render a decision on the incapacity of the pregnant woman before proceeding to rule on the Application.
- (d) The standard for granting authority to a guardian to consent to an abortion shall be whether or not the procedure would be in the best interests of the incapacitated person.
- (e) The statutory requirement that a decision by the court upon an Application shall be rendered within 3 business days of filing of the Application shall apply to filing of

the Application and not to a prerequisite Petition for Guardianship, unless the 2 petitions are consolidated.

CROSS REFERENCES: See Supreme Court Orphans' Court Rule No. 16.1.

Pursuant to the Abortion Control Act, 18 Pa. C.S.A. § 3206(f)(4), decision upon an Application must be rendered within 3 business days of the filing of the Application.

In regard to paragraph (d), the rule is in accordance with the Abortion Control Act, 18 Pa. C.S.A. § 3206(d).

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO204                    GUARDIAN AD LITEM**

- (a) The court shall advise the pregnant minor filing an Application at the time when she files the Application that she has a right to court-appointed counsel or the right to retain private counsel at her own expense, and that she has a right to appointment of a guardian ad litem, and the court shall appoint such counsel or guardian ad litem upon request of the applicant or at its discretion.
- (b) The orphans' court shall maintain a list of qualified attorneys within the jurisdiction of the court who shall serve by court appointment as counsel for the applicant or as guardian ad litem whenever required by the Abortion Control Act or by these Rules.
- (c) A guardian ad litem will be appointed by the court in all cases where it is necessary to obtain records pertaining to an adult applicant's mental capacity to request or to consent to an abortion. The guardian ad litem may act on behalf of the minor or incapacitated pregnant woman to sign authorizations to release medical records to the court.

CROSS REFERENCES: See 18 Pa. C.S.A. § 3206(e) and Supreme Court Orphans' Court Rule No. 16.1, note.

EXPLANATORY COMMENTS: Records essential to the court's decision on an Application on behalf of a mentally incapacitated woman should be obtained through written consent of her guardian ad litem. This rule is of particular importance in cases where a medical practitioner or family member seeks authority to consent to an abortion as the guardian of the pregnant woman. Section 106 of the Mental Health Procedures Act, 50 P.S. § 7106, provides that medical records related to proceedings under the Mental Health Procedures Act may not be released without the signed authorization of the patient and that, in no case, may confidential communications between the patient and doctor, resulting from any proceedings under the Mental Health Procedures Act, be released.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO205                    MEDICAL TESTIMONY**

- (a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in all proceedings conducted in accordance with these rules and pursuant to 18 Pa. C.S.A. § 3206(c), unless objections are filed at least 10 days before the hearing.
- (b) Telephone testimony shall be limited to medical, psychological and other medical personnel who can provide information relevant to the emotional development, maturity, intellect and understanding of the applicant; the fact and duration of the applicant's pregnancy; the nature, possible consequences, and alternatives to abortion; and any other relevant evidence which the court may find useful in making a determination about the applicant's ability to give informed consent pursuant to 18 Pa. C.S.A. § 3205 or an allegation that the abortion is in the best interests of the applicant.
- (c) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO206                    TESTIMONY OF APPLICANT'S PARENTS**

The parents of a minor seeking judicial authorization of an abortion may be given an opportunity to be heard, within the discretion of the court, provided said opportunity to be heard does not delay the hearing on the Application beyond the time period described by statute, unless the applicant objects to disclosure of her pregnancy to her parents.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO207                    TRANSCRIPT OF TESTIMONY**

A record of all proceedings before the court upon an Application shall be made as a matter of course, and shall be transcribed, insofar as is practicable and necessary to meet the requirements for a prompt appeal, on the same day as the proceeding is conducted.

**EXPLANATORY COMMENTS:** An applicant for judicial consent to an abortion is entitled to an appeal directly to the Pennsylvania Superior Court after an adverse decision rendered by the Court of Common Pleas. The appeal must be heard within 5 days. Other time constraints related to gestational age of the fetus may make it imperative that a transcript be prepared expeditiously.

The Pennsylvania Rules of Appellate Procedure, Rule No. 3804, requires that the court reporter, without charge to the

applicant, transcribe the notes of testimony and deliver them to the clerk by 5:00 o'clock P.M. on the business day following receipt of the notice of appeal to the Superior Court.

CROSS REFERENCES: See 18 Pa. C.S.A. § 2306(f)(4).

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO301 VOLUNTARY RELINQUISHMENT TO AGENCY**

**(a) Court Proceedings – Voluntary Termination of Natural Mother’s Parental Rights**

When the natural mother of a child petitions the court to voluntarily terminate her parental rights and alleges in her petition that the identity and/or domicile of the birth father is unknown, she shall testify, under oath, as to the circumstances of the conception including, but not limited to, a physical description of the alleged natural father, his name, nickname or alias, his occupation or alleged occupation, his home or region or origin, and any subsequent contact with him.

**(c) When the proposed adoptee has been born outside the Commonwealth of Pennsylvania, any Petition for Adoption filed with the court shall include as exhibits thereto certified copies of all orders of court or decrees issued by a court of competent jurisdiction, which orders or decrees:**

- (1) terminate the parental rights of the birth parents of the child proposed to be adopted;**
- (2) establish rights of guardianship or custody of the child proposed to be adopted in any other person or entity other than the birth parents; and/or**
- (3) establish or set forth any special conditions and/or considerations concerning placement, custody or guardianship and adoption of the proposed adoptee.**

Rescinded September 17, 2009; New Rule WO301 adopted September 17, 2009, effective November 2, 2009. Rule WO301(b) rescinded August 27, 2013, effective October 14, 2013.

**RULE WO302 VOLUNTARY RELINQUISHMENT TO ADULT INTENDING TO ADOPT CHLD**

**(a) Court Proceedings – Voluntary Termination of Natural Mother’s Parental Rights**

When the natural mother of a child petitions the court to voluntarily terminate her parental rights and alleges in her petition that the identity and/or domicile of the birth father is unknown, she shall testify, under oath, as to the circumstances of the

conception including, but not limited to, a physical description of the alleged natural father, his name, nickname or alias, his occupation or alleged occupation, his home or region or origin, and any subsequent contact with him.

- (c) When the proposed adoptee has been born outside the Commonwealth of Pennsylvania, any Petition for Adoption filed with the court shall include as exhibits thereto certified copies of all orders of court or decrees issued by a court of competent jurisdiction, which orders or decrees:
- (1) terminate the parental rights of the birth parents of the child proposed to be adopted;
  - (2) establish rights of guardianship or custody of the child proposed to be adopted in any other person or entity other than the birth parents; and/or
  - (3) establish or set forth any special conditions and/or considerations concerning placement, custody or guardianship and adoption of the proposed adoptee.

Rescinded September 17, 2009; New Rule WO302 adopted September 17, 2009, effective November 2, 2009. Rule WO302(b) rescinded August 27, 2013, effective October 14, 2013.

**RULE WO303                    INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

- (b) When the proposed adoptee has been born outside the Commonwealth of Pennsylvania, any Petition for Adoption filed with the court shall include as exhibits thereto certified copies of all orders of court or decrees issued by a court of competent jurisdiction, which orders or decrees:
- (1) terminate the parental rights of the birth parents of the child proposed to be adopted;
  - (2) establish rights of guardianship or custody of the child proposed to be adopted in any other person or entity other than the birth parents; and/or
  - (3) establish or set forth any special conditions and/or considerations concerning placement, custody or guardianship and adoption of the proposed adoptee.

Adopted September 17, 2009, effective November 2, 2009. Rule WO303(a) rescinded August 27, 2013, effective October 14, 2013.

Note: Rule WO304 was rescinded effective October 14, 2013.

**RULE WO305                    MEDICAL TESTIMONY**

- (a) Unless objections are filed at least 10 days prior, testimony in termination of parental rights proceedings of experts including physicians, psychologists and other medical professionals may be taken by two-way advanced communication technology including video conferencing equipment and speaker phones.
- (b) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

Adopted September 17, 2009, effective November 2, 2009.

**RULE WO401            FAMILY EXEMPTION**

As soon as practicable after the grant of letters, the personal representative shall notify the person or persons entitled to the family exemption.

(a) **Procedure For Personal Property Without Petition**

- (1) The person claiming the exemption shall file with the personal representative a claim in writing containing the caption of the case, the name of the claimant, the relationship, a brief description of the property claimed, the date of the claim and the signature of the claimant.
  - (A) If the claimant is a minor, the guardian of the minor's estate shall file the claim; or if there is no such guardian, the personal representative without request made shall select for the use and benefit of the minor personal property to the full value to which the minor is entitled.
  - (B) If the claimant is an incapacitated person, the guardian of the estate of the incapacitated person shall select for the use and benefit of the incapacitated person personal property to the full value to which the incapacitated person is entitled.
- (2) The original claim shall be filed with the clerk.
- (3) Under this section, credit for the family exemption will be allowed upon confirmation of the account, or upon order of court issued pursuant to a petition filed under the provisions relating to the settlement of small estates. Where the property claimed is other than cash, the court may require evidence of value prior to approval.

EXPLANATORY COMMENT: Usually the procedure set forth in Section (a) will be followed. One purpose of the family exemption is to provide immediate funds to a member of the household of the decedent.

(b) **Procedure By Petition**

- (1) The procedure for awarding the family exemption shall be by petition in the following cases:
  - (A) When it is desired to distribute the family exemption in advance of the audit to a minor who has no guardian of his estate.
  - (B) When there is a dispute over the valuation of the property retained or claimed.
  - (C) When a claim for property is refused by a personal representative.
  - (D) When the claim is in full or in part out of real estate, or
  - (E) In all other cases where an order of court is required or desired to effect a transfer of the property retained or claimed.
  
- (2) The petition shall set forth:
  - (A) The name and current address of the petitioner, and relationship if petitioner is not the claimant.
  - (B) The name, date of death, domicile of the decedent, whether he died intestate or testate, whether letters have been granted and if so, the name and address of the person to whom granted.
  - (C) The name, address at the time of decease of the decedent, and relationship of the claimant.
  - (D) If the claimant is not the surviving spouse, the names, addresses and legal representatives if any of other possible claimants, and other relevant facts to establish that there are no members of any prior class, and no other members of the claimant's class who have maintained the family relationship and are entitled to make a claim.
  - (E) A description of the property claimed and the gross value thereof. If real estate is claimed, it shall be sufficiently described to identify it accurately, and a list shall be provided of all liens against it.
  - (F) Whether the property claimed was specifically devised or bequeathed by the decedent or otherwise specifically disposed of by him, and if so, a statement that there are no other assets available for the exemption.
  - (G) Whether there is any objection to the claim and if so, by whom.
  - (H) Whether allowance of the claim prior to the audit or confirmation of the account is requested.
  
- (3) If the claim is in whole or in part out of real estate, the petition shall be accompanied by a valuation of 2 appraisers not related to any of the parties,

setting forth the fair market value of the property claimed. The appraisers shall state their profession and shall certify that by virtue of their profession they are familiar with values of real estate in the vicinity of the subject property.

- (4) The petition shall conclude with a prayer for the exemption. When necessary the court shall provide for notice or appraisal of the property or both and shall fix a return day. The following exhibits shall be attached:
  - (A) A copy of the inventory or other evidence of the value of the property claimed.
  - (B) When an automobile is claimed, the certificate of a reputable dealer showing its market value as of the date of death.
  - (C) Proof that notice was given at least 10 days prior to presentation of the petition to any person with an adverse interest who does not consent to the prayer of the petition.
- (5) If no exceptions are filed within 10 days to a decree awarding property for the family exemption, absolute confirmation of the decree shall be as of course, whereupon the property claimed shall be transferred and delivered. Where the transferee does not request early distribution, the property may be awarded at the audit of the estate.
- (6) If exceptions are timely filed to a petition to an appraisal or to a decree awarding property as the family exemption, the court shall hold a hearing to determine the issues and provide for an appropriate decree.
- (7) When real estate set apart is appraised in an amount in excess of that claimed and the claimant refuses to accept it within the period allowed for exceptions or fails to make payment of the surplus within the time established by law, the court shall order the sale or other appropriate disposition of the property.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO402 ALLOWANCE TO SURVIVING SPOUSE OF INTESTATE OUT OF REAL ESTATE**

Proceedings regarding allowance to the surviving spouse of an intestate out of real estate shall follow the local rules for awarding the family exemption when the claim is in full or in part out of real estate.

**EXPLANATORY COMMENT:** This rule exists solely for satisfying the requirements of Supreme Court Orphans' Court Rule 12.2.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO403            SPECIFIC PERFORMANCE**

**(a)    Preliminary Order**

Upon presentation of a petition for specific performance, the court shall award a citation directed to the party failing or refusing to perform the contract; and further, in the case of real estate, the court will make an order directing the clerk to forward to the Prothonotary of the Court of Common Pleas wherein the real estate lies, a certificate showing the proceeding as required by 20 Pa. C.S.A. § 3390(c), that the same may be entered in the appropriate docket.

**(b)    Notice**

Notice of the filing of the petition shall be given immediately upon filing the same to all parties interested as heirs, devisees or legatees of the decedent or to such persons as the court may direct. Such notice may be given personally or by certified mail.

**(c)    Default of Answer - Decree**

After service of the citation and notice, if no answer is filed and it appears that the facts are sufficient in equity, the court will decree specific performance of the contract.

**(d)    Bond**

When it appears that the bond entered is not sufficient to cover the transaction, the court may require additional bond.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO404            DISTRIBUTION IN KIND**

**Personal Property**

(a)    When distribution in kind of personal property is to be made by court order, and the parties having an interest in the particular property or its proceeds agree as to which of them shall have the property at its inventory or other agreed valuation, the personal representative shall state these facts in the petition for distribution.

(b)    In cases where the personal property has a readily ascertainable market value and no arrangement for another distribution is set forth in the petition for distribution, the court will distribute such property to all those in the proportionate shares as their interest appears, unless the property cannot be divided into proper shares. In the latter case, the court may award undivided interests in the property to the persons as their interests may appear, or the court may direct the personal representative to sell so much thereof as cannot be so divided.

- (c) In cases where the personal property does not have a readily ascertainable market value, the petition shall have attached thereto an election to take in kind, consented to by the other parties interested in the fund for distribution.
- (d) When the personal property to be distributed in kind has no readily ascertainable value and the parties in interest do not agree to a distribution, the court may direct an auction thereof upon 10 days notice, personally or by mail, to parties in interest, at such a time and place as the court may direct. The court may restrict the bidding to parties in interest or direct a public auction as equity may require.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO405                    PETITIONS FOR DISTRIBUTION**

- (a) A Petition for Distribution shall contain the caption for the Estate, be addressed to the presiding judge of the Orphans' Court Division of the Court of Common Pleas of Westmoreland County, Pennsylvania, and shall contain information in paragraphs numbered as follows:
  - (1) The date of death of decedent, whether decedent died testate or intestate, and the city, county and state of domicile (and country if not domiciled in the United States).
  - (2) The type of letters granted (testamentary or of administration, etc.), date of grant and if with or without bond.
  - (3) The newspaper and legal journal where letters were advertised, the date of the first complete advertisement, and an averment that this date was more than four months before the filing of the account. Proofs of publication shall be attached as Exhibit "A".
  - (4) Whether within three months after the grant of letters written notice was sent to i) any corporations and associations named as beneficiaries in the will; ii) the Commonwealth or political subdivision having a claim for maintaining the decedent in an institution where death occurred [see §§ 3330 and 3393 of the P E F Code]; and iii) beneficiaries and intestate heirs as required by Rule 5.6 of the Pennsylvania Orphans' Court Rules.
  - (5)
    - (a) Whether decedent was married and if so, to whom.
    - (b) Whether the spouse survived, and date of death of the spouse if applicable.
    - (c) Whether there is an election by the surviving spouse. A copy of any election to take under or against a will shall be attached as an exhibit.
  - (6) Whether the decedent married and/or children were born to or lawfully adopted by the decedent after the execution of the will or codicil; if so, relevant names and dates.

- (7) Whether there is a claim for the family exemption, the amount of the claim, by whom claimed, and whether the same has been set aside. Attach as an exhibit a copy of any claim which has been filed.
- (8) Whether the estate is subject to Federal Estate Tax; if so, whether it has been paid and whether a closing letter has been received. Attach as an exhibit a copy of any closing letter received.
- (9) Whether the estate is subject to Pennsylvania Inheritance Tax; if so, whether it has been paid and whether a Notice of Inheritance Tax Appraisalment has been received. Attach as an exhibit a copy of any Notice received.
- (10) Whether the estate is subject to Pennsylvania Estate tax; if so, whether it has been paid and whether an Estate Tax Determination has been received. Attach as an exhibit a copy of any Determination received.
- (11) An averment that written notice has been given of the filing of the account and of the time and date for audit to every unpaid creditor who has given written notice of his claim to the petitioner or to the petitioner's attorney of record, together with a list of all unpaid creditors, the amounts of their claims, the category of claim under §3392 of the P E F Code, and the extent to which their claims are admitted.
- (12) Whether a charitable interest is involved; if so, whether notice was given to the Attorney General as required by Rule 5.5 of the Pennsylvania Orphans' Court Rules, and whether a response has been received. Attach as an exhibit a copy of any response.
- (13) Whether the decedent was an inmate of a public institution; if so, an averment that a copy of the account, certified by counsel, was filed with the Pennsylvania Department of Revenue in accordance with Rule 6.7 of the Pennsylvania Orphans' Court Rules.
- (14) Whether the decedent was a veteran or the child of a veteran entitled to benefits; if so, an averment that a copy of the account, certified by counsel, was filed with the United States Veterans Administration in accordance with Rule 6.8 of the Pennsylvania Orphans' Court Rules.
- (15) Whether the decedent received medical assistance after August 15, 1994; if so, whether the Department of Public Welfare has been given notice in accordance with the provisions of 62 Pa. C.S.A. §1412.
- (16) An averment that all parties, other than creditors, known to have an interest in the estate as unpaid heirs or beneficiaries, were given written notice of the filing of the account and of the time and date for audit at least twenty days prior to the date for audit. If such notice was not given, explain the circumstances in detail.
- (17)
  - (a) The names of any parties not sui juris and not represented.
  - (b) The names of any parties in the military service of the United States.

- (c) Any entities (estates, guardianships, etc.) of which the decedent was a fiduciary at the time of death.
  - (18) Whether there is a partial or entire intestacy. Explain as necessary.
  - (19) The names and addresses of all persons having any interest as devisees, legatees or heirs, with the names of parents where necessary to show relationship. In the case of intestacy, it shall also include a statement as to whether a surviving parent is the natural parent of any surviving children.
  - (20) A statement of all changes in distribution under the will, resulting from the death of persons named as beneficiaries therein, ademption of specific gifts, election to take against the will or otherwise, together with the date of death of any such beneficiary.
  - (21) Whether any elections to take in kind have been made. Attach as an exhibit any such elections.
  - (22) An averment that no distribution has been made other than that appearing in the account or in the petition for distribution. Attach as an exhibit receipts for all distributions, or explain why any are omitted.
  - (23) An averment that all personal representatives are petitioners; or the names of and the circumstances surrounding those who have not joined as petitioners, attaching as an exhibit a copy of any written notice they have been given of the filing of the account and of the audit.
  - (24) A statement of all changes occurring since the filing of the account, including assets and income received, and disbursements and distributions made. Where there are more than a few items, they may be attached as exhibits rather than listed in the petition.
  - (25) The net balance and the kind, form, and character of the property to be distributed. Real estate shall be described in an exhibit as a proposed "Certificate of Award of Real Estate in Distribution" appropriately captioned and containing the names and addresses of the distributees, the nature of their interests where there is more than one distributee, a full description of the real estate to be distributed, and the value of each parcel to be distributed.
  - (26) Any other matters requiring adjudication.
  - (27) A request that a distribution be made by the Court in accordance with the proposed Decree of Distribution, which shall be submitted with the Petition.
- (b) The petition shall be signed and verified by the personal representatives, and shall indicate their capacity.

- (c) The filing of a Petition for Distribution and Decree shall be mandatory. Approved forms are available in the Register of Wills' office. They may be retyped on a word processor for convenience.

CROSS REFERENCE: 20 Pa. C.S.A. §3513; Pennsylvania Orphans' Court Rule 6.9.

Revised February 12, 1998; effective March 30, 1998. Rule WO405(a)(19) and Rule WO405(a)(20) rescinded November 4, 2005; New Rule WO405(a)(19), Rule WO405(a)(20) and Rule WO405(c) adopted November 4, 2005, effective December 25, 2005.

**RULE WO406 PARTITION**

- (a) A petition for partition shall include:
- (1) The name, residence and date of death of the decedent;
  - (2) Whether the decedent died testate or intestate, in whole or in part, and a copy of the will, if any;
  - (3) A description, giving the size and location, of the property to be partitioned;
  - (4) The estimated value of the property
  - (5) Liens and charges to which the property is subject and rents due from tenants thereof;
  - (6) Whether the property has previously been partitioned or valued for partition;
  - (7) The names, addresses and relationship of those interested in the land to be partitioned, and the extent of the interest of each of such persons;
  - (8) If the interest of any party is created by a recorded deed or will, a reference to such record;
  - (9) A reference to the number and term of appointment of any fiduciaries representing any of the parties;
  - (10) Whether any of the parties are absentees or presumed decedents, and if so, their representatives;
  - (11) Whether there is a need to appoint guardians or trustees for interests not represented;
  - (12) The names of any co-tenants who have collected rents or owe rent for any of the premises, and the amounts thereof, if known;
  - (13) Signed consents or joinders, if any;
  - (14) 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;
  - (15) A proposed preliminary order.
- (b) Where it appears from the petition that the address of any party is unknown to the petitioner, the citation shall be served by publication for 3 successive weeks in the Westmoreland Law Journal and in a newspaper of general circulation published at or near the location of the last known residence of the party whose present address is unknown. If the name of a party is unknown, or if there is no last known address, the newspaper where publication is made shall include a newspaper of general circulation published at or near the location of the property to be partitioned. The court may direct such additional means, if any, as the court deems reasonably necessary to effect notice to such parties.

- (c) If the court determines that there shall be a partition because of a default or admission, or after a hearing on the petition, the court shall enter an order directing partition which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property. Further proceedings shall generally be in conformity with the Pa. R.C.P. No. 1558, et seq. All required court filings shall be with the clerk.
- (d) If rents are determined to be due from or to any co-tenants, equitable adjustment thereof shall be included in the partition proceedings.
- (e) Costs, compensation of appraisers, compensation of experts authorized by the court, any master's fee, and counsel fees shall be allocated in such amount and manner as the court shall deem equitable.

EXPLANATORY COMMENT: See Supreme Court Orphans' Court Rules, Rules 5.1(c) and 12.8.

Adopted February 1, 1996, effective May 1, 1996, renumbered from Rule W0405, effective March 30, 1998.

**RULE WO407            SMALL ESTATES**

**(a)    Personalty**

- (1) When any person domiciled in Westmoreland County, Pennsylvania dies owning property (exclusive of real estate and of wages, salary or any accrued vacation benefits or pension payable under 20 Pa.C.S.A. § 3101, but including personal property claimed as the family exemption) of a gross value not exceeding \$50,000.00, any party in interest may present a petition for the distribution of the property. The petition shall set forth:
  - (A) the name, date of death and domicile of the decedent, whether testate or intestate, and whether letters have been granted.
  - (B) if letters have been granted, to whom, the date of grant of letters, the date of the first complete advertisement of letters, if applicable, and the amount of bond, if any.
  - (C) the names and relationships of all beneficiaries under the will, if any;
  - (D) the names of the surviving spouse and next of kin if decedent died intestate as to any personalty;
  - (E) the names of any persons entitled to distribution who are not sui juris, with the names of their trustees or guardians and a reference to their appointment;
  - (F) when a family exemption is claimed out of personalty and has not previously been claimed:
    - (1) by whom the exemption is claimed;
    - (2) the name of the surviving spouse, if any, whether the family relationship was maintained, and whether spousal rights have been forfeited;

- (3) if the spouse is not the claimant, the names of such children as were members of the same household as the decedent at his death, indicating any who are not sui juris, or if there are no such children, the names of the parent or parents of the decedent who were members of the same household as the decedent at his death;
  - (4) the names of any other children, heirs or beneficiaries not previously identified and the legal representatives, if any, of all not sui juris;
  - (5) a description of the property claimed and the gross value thereof;
  - (6) whether there is any objection to the claim, and if so, by whom;
- (G) an itemized list of the personal property owned by the decedent at date of death, and the total value thereof (the itemized list may be attached as an exhibit, with only the total listed here);
  - (H) an itemized statement of all disbursements made prior to filing the petition, specifying the date, amount, payee and purpose of each disbursement, and the total of all disbursements (the itemized list may be attached as an exhibit, with only the total listed here);
  - (I) an itemized statement of all unpaid administrative expenses, preferred and other debts, and taxes, including those due the Commonwealth of Pennsylvania, together with the total thereof (the itemized list may be attached as an exhibit, with only the total listed here);
  - (J) an itemized list of all claims not admitted, and the total thereof (the itemized list may be attached as an exhibit, with only the total listed here);
  - (K) the names of all unpaid creditors whose claims are admitted, and of all heirs or beneficiaries not joining in or consenting to the petition.
- (2) Exhibits shall be attached in the following order:
- (A) the consent or joinder of all heirs, beneficiaries, creditors, sureties on any administrator's bond, and any others interested in the decedent's estate, who consent to the granting of the petition;
  - (B) a copy of the will, if any;
  - (C) proof of advertising of letters, if applicable;
  - (D) a receipt or statement from the Agent of the Commonwealth showing that the Pennsylvania Inheritance Tax has been paid in full, or consent to the granting of the petition;
  - (E) when an automobile is claimed as part or all of the family exemption, the certificate of a dealer or dealer's employee showing its market value as of the date of death;
  - (F) Itemized lists, if not included in the body of the petition.
  - (G) If the decedent attained age 55, a letter from the Department of Public Welfare disclosing the amount, if any, of its claim against the Estate.

- (3) The petition shall be accompanied by a proposed decree, which specifically sets forth the proposed distribution.
- (4) Upon presentation of the petition, the court may enter a decree without notice or with such notice or citation as the court shall direct.

CROSS REFERENCES: See 20 Pa. C.S.A. § 3102.

**(b) Personalty and realty.**

- (1) When any person domiciled in Westmoreland County, Pennsylvania, dies owning real and personal property of a gross value not exceeding \$50,000, the personal representative, after the expiration of 1 year from the date of the first complete advertisement of the grant of letters, may present a petition to the court seeking approval of the representative's administration of the estate, requesting distribution of the estate assets, and further requesting discharge of the representative.
- (2) The petition shall set forth the information required in WO406 (a). In addition, the petition shall include in the appropriate paragraph:
  - (A) the items of real property owned by decedent and their value at the date of death;
  - (B) whether the decedent died intestate as to any real property;
  - (C) as an exhibit, an account showing the administration and any distribution theretofore made of the estate;
- (3) Upon presentation of the petition, the court shall direct 10 days' written notice to be given to all parties in interest who have not consented thereto that unless exceptions are filed to said petition and the account annexed, within 30 days of the date of the filing thereof, the court will confirm said account, make distribution as requested, and may discharge the petitioner and any surety from future liability.
- (4) Any final order shall provide that it will not become absolute for 10 days.

**CROSS REFERENCES:**

See 20 Pa. C.S.A. § 3531. When a family exemption is claimed out of real estate, a petition must be presented under 20 Pa. C.S. A. § 3123, and WO401, unless all parties in interest agree in writing to the valuation at which such real estate is to be awarded. See Supreme Court Orphans' Court Rule 12.1.

Adopted February 1, 1996, effective May 1, 1996, renumbered from Rule WO406, effective March 30, 1998. Revised December 3, 2003, effective January 19, 2004. Rule WO407(a)(2)(G) and Rule WO7(a)(5) rescinded November 4, 2005; New Rule WO407(a)(2)(G) adopted November 4, 2005, effective December 25, 2005. Introductory paragraph of Rule WO407 (a)(1) rescinded April 28, 2014; New introductory paragraph of Rule WO401(a)(1) adopted April 28, 2014, effective June 9, 2014. Rule WO407(b)(1) rescinded September 17, 2015; new rule WO407(b)(1) adopted September 17, 2015, effective November 9, 2015.

**RULE WO408                   ISSUANCE OF A SHORT CERTIFICATE AFTER AN ESTATE IS CLOSED**

- (a) For a period of six months after the date of a decree of final distribution, small estates petition or family settlement agreement, the register shall issue short certificates to the personal representative or attorney of record for the estate, upon request.
- (b) When more than six months have expired from the date of a decree of final distribution, small estates petition or family settlement agreement, the register shall issue short certificates to the personal representative or attorney of record for the estate only after the filing of a praecipe. The praecipe shall be signed by the attorney of record or signed and verified by the personal representative and shall set forth:
  - (1) The caption;
  - (2) The reason for obtaining the short certificates;
  - (3) That all unpaid creditors and heirs or beneficiaries who would be affected by newly discovered assets have been notified;
  - (4) If there are any newly discovered assets, that a supplemental Inheritance Tax Return will be filed.

Adopted January 7, 1999, effective February 22, 1999.

**RULE WO409                   FAMILY SETTLEMENT AGREEMENTS**

Before the register accepts a family settlement agreement for filing, the family settlement agreement must be accompanied by a certification from the filing party or their counsel that no minor or incapacitated person, whose interest is not represented by a court-appointed guardian, has an interest in the decedent's estate. In the absence of such certification, the estate must proceed to audit.

Adopted November 4, 2005, effective December 25, 2005.

**RULE WO501                   MEDICAL TESTIMONY**

- (a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in all guardianship cases, unless objections are filed at least 10 days before the hearing.

- (b) When an emergency guardianship petition is presented, the testimony of a physician or psychologist shall be taken in the courtroom by speaker telephone unless otherwise directed by order of court.
- (c) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

CROSS REFERENCES: See 20 Pa. C.S.A. § 5518 for provisions regarding testimony by qualified professionals. See 20 Pa. C.S.A. § 5513 regarding emergency guardianships.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO502            PETITION**

- (a) In addition to the allegations required by statute or Supreme Court Rule, all petitions for appointment of guardian shall set forth:
  - (1) Whether or not the alleged incapacitated person is a fiduciary in any capacity.
  - (2) Whether the alleged incapacitated person was ever a member of the Armed Services of the United States, or is receiving any benefits from the United States Veterans Administration, or its successor.
  - (3) Whether any other court has ever assumed jurisdiction in any proceeding to determine the incapacity of the alleged incapacitated person.
- (b) The notice of the petition and hearing shall be attached as a cover sheet to a citation and petition when served upon the alleged incapacitated person, and shall be in the form included with the forms suggested for use in the orphans' court or in such form as may be adopted by the Supreme Court of Pennsylvania.
- (c) Unless the court directs otherwise, a copy of the notice and petition shall be given to those persons entitled to notice under 20 Pa. C.S.A. § 5511(a) by certified mail, return receipt requested. Proof of service shall be filed with the court at the hearing.

CROSS REFERENCES: See 20 Pa. C.S.A. § 5511(e) for current required allegations for petitions. Subparagraph (1) is taken from prior Rule WO19(a)(1). Subparagraph (2) is taken from Supreme Court Orphans' Court Rule 14.2(a)(5). Subparagraph (3) is taken from Supreme Court Orphans' Court Rule 14.2(a)(9).

See 20 Pa. C.S.A. § 5511(a) regarding the requirement of notice. See Form Guardianship-1 for the form of notice.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO503                    PETITION TO INVADE PRINCIPAL ASSETS**

A Petition to Invade Principal Assets shall be presented to the court in all situations where the guardian intends to invade the principal assets of an incapacitated person or minor. Such Petition to Invade Principal Assets shall contain, at minimum, the following averments of fact:

- (a) In the case of incapacitated persons:
  - (1) Name, age and residence of the incapacitated person.
  - (2) A reference to the original date of the guardian's appointment.
  - (3) Whether the guardian is bonded and, if so, for what amount.
  - (4) An itemized listing of the assets of the incapacitated person.
  - (5) An itemized listing of the income and expenses of the incapacitated person.
  - (6) A listing of the names and addresses of all creditors, and the amount due each.
  - (7) The purpose for the proposed invasion of principal.
  - (8) Whether any prior Petitions to Invade Principal Assets have been presented.
  - (9) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition to Invade Principal Assets.
  - (10) The maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary (e.g., \$500.00 per month for the period January 1, 1995 through December 31, 1996).
  
- (b) In the case of minors with court-appointed guardians:
  - (1) Name, age and residence of the minor and the person with whom the minor resides.
  - (2) A reference to the original date of the guardian's appointment.
  - (3) Whether the guardian is bonded and, if so, for what amount.
  - (4) Names and residences of the living parents and their incomes, and whether their incomes are sufficient to support the minor properly.
  - (5) An itemized listing of the assets of the minor.
  - (6) An itemized listing of the income of the minor.
  - (7) Whether there are other funds (e.g., current beneficiary of a trust or estate) available for the care, maintenance, education or funeral expenses of the minor or other persons for whom an invasion of principal is requested.
  - (8) A listing of the names and addresses of all creditors, and the amount due each.
  - (9) The purpose for the proposed invasion of principal.
  - (10) Whether any prior Petitions to Invade Principal Assets have been presented.
  - (11) That the next-of-kin of the minor have been notified of the presentation of the Petition for Allowance, if directed by the court.
  - (12) The maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary (e.g., \$500.00 per month for the period January 1, 1995 through December 31, 1996).

CROSS REFERENCES: See 20 Pa. C.S.A. § 5536(a), which permits the expenditure of income for the care and maintenance of an incapacitated person without the

necessity of court approval, but which requires court authorization for the expenditure of principal.

See 20 Pa. C.S.A. § 5164, which permits the expenditure of income for the care, maintenance and education of a minor without the necessity of court approval, but which requires court authorization for the expenditure of principal.

**EXPLANATORY COMMENTS:** The time period for which an invasion of principal may be requested may generally not exceed 1 year.

Under 20 Pa. C.S.A. §§ 5164 and 5536(a), court approval is required to use income for anyone other than the minor or incapacitated person. In such cases, a petition in essentially the same form as provided by this rule should be filed.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO504                    PETITION FOR SALE OF ASSETS**

A Petition for Sale of Assets shall be presented to the court in all situations where the guardian intends to sell real or tangible personal property of an incapacitated person. Such Petition for Sale of Assets shall contain, at minimum, the following averments of fact:

- (a) A reference to the original date of the guardian's appointment.
- (b) Whether the guardian is bonded and, if so, for what amount.
- (c) An itemized listing of the assets of the incapacitated person.
- (d) An itemized listing of the income and expenses of the incapacitated person.
- (e) The reason for the proposed sale and the proposed distribution of proceeds. If the property is real estate, (i) whether the property is expensive to maintain; (ii) whether the property is occupied and/or generating income; (iii) whether the guardian needs the proceeds for the care of the incapacitated person.
- (f) If the purpose for the proposed sale is the payment of debts, a listing of the names of all creditors, and the amount due each.
- (g) If the property is tangible personal property, one appraisal shall be attached. If the property is real estate, the petition shall be accompanied by a valuation of two appraisers not related to any of the parties, setting forth the fair market value of the property claimed. The appraisers shall state their profession and shall certify that by virtue of their profession, they are familiar with values of real estate in the vicinity of the subject property.
- (h) If the property is the incapacitated person's residence,

- (1) That the incapacitated person will not be returning to the property to live. (Indicate where the incapacitated person is currently living, i.e., nursing home, personal care home, etc.)
  - (2) If a private sale, that the price is greater than could be obtained at a public sale. If not, or if the price is less than the appraisal, indicate whether a commission is being charged.
- (i) Notice of the presentation of the Petition for Sale of Assets shall be given to all next of kin of the incapacitated person, whose written consents to the sale are not attached.
  - (j) The proposed decree shall contain a provision regarding the posting of bond.

CROSS REFERENCES: See Rule 12.10 of the Supreme Court Orphans' Court Rules regarding sales of property.

See the 1949 Official Comment to 20 Pa. C.S.A. § 5521, which discusses 20 Pa. C.S.A. §§ 5151 and 5155 and the concerns regarding the sale of property.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO505                    PETITION FOR COMPROMISE OF CLAIM**

A Petition for Compromise of Claim shall be presented to the court in all situations where the guardian proposes to compromise a claim by or against an incapacitated person. Such Petition for Compromise of Claim shall contain, at minimum, the following averments of fact:

- (a) A reference to the original date of the guardian's appointment.
- (b) Whether the guardian is bonded and, if so, for what amount.
- (c) An itemized listing of the assets of the incapacitated person.
- (d) An itemized listing of the income of the incapacitated person.
- (e) A listing of the names and addresses of all creditors, and the amount due each.
- (f) A concise description of the claim which is proposed to be compromised.
- (g) Whether any prior Petitions for Compromise of Claim have been presented.
- (h) That the next-of-kin of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.

- (i) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.

CROSS REFERENCES: See 20 Pa. C.S.A. § 5521(b), relating to the guardian's powers, duties and liabilities.

See Pa. R.C.P. No. 2051, et seq., for the settlement procedures applicable to actions commenced in the civil division.

Adopted February 1, 1996, effective May 1, 1996

**RULE WO510            REPORTS**

- (a) Guardian of the Estate and Guardian of the Person Reports required pursuant to 20 Pa.C.S.A. §5521, although separate reports, shall be filed on the same date as hereinafter set forth in subsections (b) and (c). The original Reports must be filed with the Register of Wills, and a copy of each Report must be filed with the Office of the Court Administrator, Orphans' Court Division.

- (1) The Orphans' Court Administrator shall review each report.
- (2) The Orphans' Court Administrator shall bring to the attention of the court any report the contents of which do not conform to report criteria.

- (b) Guardians of the Estate Reports must be filed within 90 days of the Order Appointing a Guardian, and on each annual anniversary of the Order.

- (c) Guardian of the Person Reports must be filed on each annual anniversary of the Order Appointing a Guardian.

Adopted December 13, 2006, effective January 29, 2007.

**RULE WO601            JURISDICTION**

- (a) The following petitions for approval of settlement shall be brought before the orphans' court when suit has not been commenced in the civil division:

- (1) Petition to Compromise and Settle Minor's Action;
- (2) Petition to Compromise and Settle an Incapacitated Person's Action; and
- (3) Petition to Compromise and Settle Wrongful Death and Survival Action.

- (b) Upon receipt of a petition, the court may, at its discretion, grant the petition as presented, request additional information from any party, or order testimony to be taken on the petition.

CROSS REFERENCES: With regard to wrongful death and survival actions, See 42 Pa. C.S.A. § 8301(b) and 20 Pa. C.S.A. §§ 2101-2104.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO602                    PETITION TO COMPROMISE AND SETTLE MINOR'S CLAIM**

A Petition to Compromise/Settle a Minor's Claim shall contain, at minimum, the following averments of fact:

- (a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the minor at the time of the accident/injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.
- (b) Type of injury suffered. Medical documentation (e.g. hospital records or a physician's report) should be attached to the Petition in order to advise the court of the extent and effect of the injuries. If the medical documentation indicates there are residual effects, the Petition should refer to the specific portions of the medical documentation which contain such opinions.
- (c) Medical expenses incurred. If any portion of the medical expenses is to be deducted from the minor's share of the settlement, the Petition should contain an affirmation that the par-ents/guardians will not be reimbursed for such expenses from any other source.
- (d) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the parent/guardian of the minor).
- (e) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.
- (f) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)
- (g) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.
- (h) A list of any other expenses which will be deducted from the minor's share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).
- (i) The exact portion the minor is to receive.

- (j) The proposed order should provide in detail the proposed distribution of funds. The proposed distribution shall conform to the distribution procedures used in the civil division, under the Pennsylvania Rules of Civil Procedure.
- (k) A separate petition shall be filed for each minor, and the clerk shall assign separate file numbers to each such petition.

CROSS REFERENCES: All petitions must meet the basic requirements established by WO107.

Under Pa. R.C.P. Nos. 2039 and 2206, the following distribution procedures are used in the civil division.

1. Pursuant to Pa. R.C.P. No. 2039(b), the court shall order the proceeds paid to the guardian of the estate of the minor.
2. If there is no court-appointed guardian of the estate and the amount is not more than \$25,000, Pa. R.C.P. No. 2039(b)(1) provides that the court may (but is not obligated to) release the proceeds directly to "the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor."
3. If there is no court-appointed guardian of the estate and the amount is more than \$25,000, Pa. R.C.P. No. 2039(b)(2) requires that the proceeds be deposited in a federally insured savings account - in the minor's name - with a stipulation that no withdrawals can be made until the child reaches the age of eighteen (18) except upon prior order of court.
4. The order must include a provision that proof of the sequestered account shall be promptly filed of record.

EXPLANATORY COMMENTS: Despite the discretionary language contained Pa. R.C.P. No. 2039(b)(1), the court generally does not release the proceeds directly to the minor or guardian. Except in cases involving extremely small damages or unique circumstances, the court routinely requires that the funds be deposited in a federally insured savings account in the minor's name with a stipulation that no withdrawals can be made until the child reaches the age of 18 except upon prior order of court.

Adopted February 1, 1996, effective May 1, 1996. Revised December 3, 2003, effective January 19, 2004. Rule WO602 Cross References rescinded November 4, 2005; new Rule WO602 Cross References adopted November 4, 2005, effective December 25, 2005.

**RULE WO603**

**PETITION TO COMPROMISE AND SETTLE INCAPACITATED PERSON'S CLAIM**

A Petition to Compromise/Settle an Incapacitated Person's Claim shall contain, at minimum, the following averments of fact:

- (a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the incapacitated person at the time of the accident/injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.
- (b) Type of injury suffered. Medical documentation (e.g. hospital records or a physician's report) should be attached to the Petition in order to advise the court of the extent and effect of the injuries. If the medical documentation indicates there are residual effects, the Petition should refer to the specific portions of the medical documentation which contain such opinions.
- (c) Medical expenses incurred. If any portion of the medical expenses is to be deducted from the incapacitated person's share of the settlement, the Petition should contain an affirmation that the guardian will not be reimbursed for such expenses from any other source.
- (d) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the guardian of the incapacitated person).
- (e) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.
- (f) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)
- (g) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.
- (h) A list of any other expenses which will be deducted from the incapacitated person's share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).
- (i) The exact portion the incapacitated person is to receive.
- (j) The proposed order should provide in detail the proposed distribution of funds. The proposed distribution shall conform to the distribution procedures used in the civil division, under the Pennsylvania Rules of Civil Procedure.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO604                    PETITION TO COMPROMISE AND SETTLE WRONGFUL DEATH  
AND SURVIVAL ACTION**

A Petition to Compromise/Settle a Wrongful Death and Survival Action shall contain, at minimum, the following averments of fact:

- (a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the decedent at the time of the accident/injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.
- (b) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the heirs/beneficiaries of the decedent).
- (c) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.
- (d) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)
- (e) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.
- (f) A list of any other expenses which will be deducted from the heirs'/beneficiaries' share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).
- (g) A statement as to whether the plaintiff's decedent died intestate or with a will, and if a will was in existence, the effect of the will upon the proposed monetary distribution between wrongful death and survival actions. If a will exists, a copy must be attached as an exhibit to the Petition.
- (h) The exact amount of the wrongful death portion of the settlement each of the wrongful death beneficiaries is to receive.
- (i) Dependency. Whether the parties proposed to receive funds from the wrongful death portion of the settlement were dependents of the decedent.
- (j) Survival. How long the decedent survived after the accident.
- (k) Notice. That notice of the presentation of the Petition has been given to all of the beneficiaries named under the decedent's will, if the decedent died testate, and to the decedent's intestate heirs, whether the decedent died testate or intestate.
- (l) The proposed order should provide in detail the proposed distribution of funds.

Adopted February 1, 1996, effective May 1, 1996.

**RULE WO605                    PETITIONS FOR ALLOWANCE**

- (a) All withdrawals from a minor's account require a Petition for Allowance.
- (b) Petitions for Allowance shall contain, at minimum, the following averments of fact:
  - (1) The facts and circumstances surrounding the origination of the minor's fund.
  - (2) A chronological statement of all prior petitions for allowance, including the reasons therefor, the amounts thereof, and the disposition.
  - (3) The age of the minor at the time the fund was created and the minor's present age.
  - (4) The original amount of the minor's funds and the present balance of same.
  - (5) The circumstances and reasons supporting the petition for allowance.
- (c) All Petitions for Allowance shall be accompanied by:
  - (1) A proposed Order.
  - (2) A copy of the original Petition for Compromise and the Order of Distribution.
  - (3) Copies of all prior petitions for allowance and the orders with respect to same.
  - (4) Substantiating documentation to support the petition for allowance.
  - (5) A consent filed by the petitioner.

**EXPLANATORY COMMENTS:** The court recognizes the parents' legal obligation to support and care for their child. Accordingly, when withdrawal from a minor's account is requested, the court will generally not permit the minor's funds to be used for routine parental obligations.

Adopted February 1, 1996, effective May 1, 1996.