

**WESTMORELAND COUNTY RULES OF CIVIL PROCEDURE**

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Rule W1920.31	Joinder of Related Claims ..... Adopted December 16, 1993, effective April 1, 1994.
Rule W1920.32	Joinder of Related Claims; Custody; Hearing by the Court ..... Rescinded February 3, 2000; New Rule W1920.32 adopted February 3, 2000, effective April 3, 2000.
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Rule W1920.51	Hearing by the Court; Appointment of Master; Notice of Hearing ..... Rescinded May 7, 2004; New Rule W1920.51 adopted May 7, 2004, effective June 1, 2004.

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Rule W1920.51a	Hearing by the Court. All Counts Master. Notice of Hearing ..... Adopted May 7, 2004, effective June 1, 2004.
Rule W1920.53	Hearing by Master. Report. .... Rescinded May 7, 2004; New Rule W1920.53 adopted May 7, 2004, effective June 1, 2004.
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Rule W2232	Defective Joinder. Change of Parties ..... Rescinded May 10, 2004; New Rule W2232 adopted May 10, 2004, effective July 26, 2004.
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Rule W4005	Written Interrogatories ..... Adopted December 16, 1993, effective April 1, 1994.

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Adopted March 1, 2002, effective April 22, 2002, revised and adopted August 3, 2016.

Rule W6007	Approval of Sureties .....
	Adopted December 16, 1993, effective April 1, 1994.
Rule W6017	Depositories .....
	Adopted December 16, 1993, effective April 1, 1994.
Rule W6027	Statutory or License Suspension Appeals .....
	Adopted April 11, 1996, effective June 3, 1996.

**BUSINESS OF COURTS**

Note: Rule W200 was rescinded effective July 26, 2004.

Note: Rule W200.1 was rescinded effective March 27, 1995.

Note: Rules W200.2, W200.3, W200.4 were rescinded effective July 26, 2004.

Note: Rules W200.5, W200.6 were rescinded effective March 27, 1995.

Note: Rule W200.7 was rescinded effective July 26, 2004.

Note: Rule W200.8 was rescinded effective December 16, 1997.

Note: Rule W200.9 was rescinded effective March 18, 1996.

Note: Rule W205 was rescinded effective March 27, 1995.

Note: Rule W205.1 was rescinded effective July 26, 2004.

**RULE W205.2(a) PLEADINGS AND LEGAL PAPERS**

- (1) All pleadings and legal papers filed with the Prothonotary should be on white paper approximately 8-1/2 inches by 11 inches, [with printed matter 6-1/2 inches by 9 inches] with one inch margins on all four (4) sides. The lettering should be clear and legible and no smaller than point 11.
- (2) Pleadings and legal papers, including the original documents, should be filed without “blue backs” or other covers, and should be bound in the upper left hand corner with a single binder clip or staple. No tape should be used to cover the top of the paper or document.
- (3) The front page of the document should indicate the total number of pages, including exhibits, submitted for filing. (For example: Page 1 of 10).

Adopted May 10, 2004, effective July 26, 2004.

**RULE W205.2(b) COVER SHEET**

All parties required to file a cover sheet pursuant to Pa.R.C.P. 205.5 shall also file a Westmoreland County Civil Cover Sheet. The Westmoreland County Civil Cover Sheet shall be in the form set forth in the Forms Section of the Westmoreland County Rules of Court.

Rescinded April 22, 2010; New Rule W205.2(b) adopted April 22, 2010, effective May 26, 2010.

Note: Rule W206 was rescinded effective July 26, 2004.

**RULE W206.1(a) PETITIONS – RULE TO SHOW CAUSE**

No applications to the court other than those listed in Pa.R.C.P. 206.1(a) have been designated by local rule as “Petitions.”

Adopted May 10, 2004, effective July 26, 2004.

**RULE W206.4(c) PROCEDURES FOR ISSUANCE OF A RULE TO SHOW CAUSE**

- (1) The petition for the rule to show cause and a proposed Order substantially in the form prescribed by Pa.R.C.P. 206.5(d) shall be presented in Motions Court. The petitioner shall serve a copy of the petition and proposed Order on the respondent or respondents, together with written notice of the time, date and location for presentation, at least four (4) days in advance of the date when presentation is to occur. Service shall be made in accordance with the Rules of Civil Procedure governing service of legal papers other than original process.
- (2) A certificate that the petition and proposed Order, and written notice of the time, date and location of presentation have been served on the respondent or respondents, shall be attached to the petition at the time of presentation.
- (3) At the time of presentation, the court shall use the discretion granted by Pa.R.C.P. 206.4 to determine if a rule to show cause should be issued and whether any interim relief requested should be granted. The interim relief may include a stay of execution.
- (4) In the event the court grants the rule to show cause:
  - (a) The court shall enter an Order in accordance with Pa.R.C.P. 206.5.
  - (b) The petitioner shall file the petition and Order with the Prothonotary, who shall issue the rule. Within three (3) days thereafter, the petitioner shall serve the rule as directed in the Order, together with a copy of the petition and Order upon which the rule was issued, which service shall be made in accordance with the Rules of Civil Procedure governing service of legal papers other than original process.
  - (c) Within three (3) days of such service, the petitioner shall file a certificate of service with the Prothonotary, and shall deliver or mail a copy of the rule, petition, Order and certificate of service filed to the chambers of the judge assigned to the case.
- (5) Upon filing an Answer, a respondent shall deliver or mail a copy thereof to the chambers of the judge assigned to the case.
- (6) If no answer is filed on or before the date Ordered, the petitioner may file a motion to make the rule absolute in accordance with Rule W208.3(a).

Adopted May 10, 2004, effective July 26, 2004.

**RULE W208.2(c) MOTIONS. STATEMENT OF APPLICABLE AUTHORITY**

All motions shall contain a specific citation to relevant constitutional provisions, case law, statutes, regulations, Rules of Court or other applicable legal authority that permit the court to grant the relief requested.

Adopted May 10, 2004, effective July 26, 2004.

**RULE W208.2(d) MOTIONS WITH CONSENT OR NO CONTEST**

- (1) All uncontested motions, or motions to which the consent of all parties has been obtained, must be accompanied by a certificate stating that
  - (a) a copy of the motion and any proposed Order has been served on every other party or attorney of record at least 4 days in advance of the date when the presentation is to occur,
  - (b) written notice of the time, date and location for presentation was given at the time the motion and any proposed Order was served, and
  - (c) the motion is in fact uncontested or has the consent of all parties.
- (2) Failure to comply with the foregoing shall result in the refusal of the court to hear the motion.

Adopted May 10, 2004, effective July 26, 2004.

**RULE W208.2(e) MOTIONS. DISCOVERY**

- (1) All motions relating to discovery shall include a certificate signed by counsel for the moving party that counsel for that party has conferred or attempted to confer with all interested parties in order to resolve the matter without court action, and shall set forth the nature of the efforts made to resolve the matter.
- (2) Failure to comply with the foregoing shall result in the refusal of the court to hear the motion.

Adopted May 10, 2004, effective July 26, 2004.

**RULE W208.3(a) MOTIONS PROCEDURE**

- (1) 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) Argument on contested motions will be heard in Motions Court. The moving party shall serve a copy of the motion and any proposed Order on every other party or attorney 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. The motion must be accompanied by a certificate stating that a copy of the motion, proposed Order and written notice has been so furnished. Failure to provide such certificate shall result in the court's refusal to hear the motion.

- (3) Uncontested motions or motions to which the consent of all parties has been obtained shall be presented in accordance with Rule W208.2(d), and may be presented at Motions Court or in chambers at any time convenient to the court.

Note: Counsel are expected to appear for Motions Court promptly by 9:00 A.M. It is anticipated that all motions should be heard by 10:00 A.M. If, upon presentation of the motion, the Court determines that extended argument is required, the court shall specially set a time for argument.

- (4) Emergency motions in civil matters may be presented at a time prearranged with the court. In emergency matters, the moving party must give telephone notice to every other party or attorney of record prior to presenting the motion, and shall, at the time of presentation of same, provide to the Court a certificate describing what notice was given. Failure to provide such certificate may result in the court's refusal to hear the motion.

Adopted May 10, 2004, effective July 26, 2004.

**RULE W210                      FORM OF BRIEFS**

- (a) The Brief of the moving party shall contain a statement of the case, a statement of the issues involved, the argument, and a short conclusion stating the precise relief sought.
- (b) The Brief of the responding party need only contain argument.
- (c) A copy of a Brief shall be served on every other party or attorney of record on the same day it is filed. A copy of a Brief shall be delivered or mailed to the chambers of the judge assigned to the case.

Rescinded May 10, 2004; New Rule W210 adopted May 10, 2004, effective July 26, 2004.

Note: Rule W211 was rescinded effective July 26, 2004.

**RULE W212.1                      CERTIFICATION OF READINESS FOR TRIAL. TIME FOR  
COMPLETING DISCOVERY AND FILING PRE-TRIAL STATEMENT**

- (a) Any party may file a certificate with the Prothonotary that the case is ready for trial. A copy of the certification found in the Forms section of these rules shall be served on the judge assigned to the case, on the Court Administrator and on all other parties or their counsel. Service shall be made at least twenty (20) days prior to the filing of the certificate.

- (b) Any party objecting to a Certificate of Readiness shall do so by filing and serving Objections within ten (10) days of service of the Certificate of Readiness. Objections shall be presented at Motions Court after four days' notice to all other parties or their counsel, and after providing a courtesy copy to the Court.
- (c) The term “ready for trial” means that:
  - (1) The pleadings are closed;
  - (2) Witnesses are presently available to appear at trial; and
  - (3) Discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.
- (d) Upon receipt of the certification of readiness, the judge assigned to the case shall issue an Order addressing the following matters:
  - (1) When Pre-Trial Statements shall be due pursuant to Pa.R.C.P. 212.1(c)(2), which dates shall be set prior to the Pre-Trial Conference.
  - (2) The date of the Pre-Trial Conference pursuant to Pa.R.C.P. 212.3.
  - (3) Such other matters that may aid in the disposition of the case.

Rescinded November 2, 2006; New Rule W212.1 adopted November 2, 2006, effective January 1, 2007. Rescinded August 12, 2015, New Rule W212.1 adopted August 12, 2015 effective November 1, 2015.

**RULE W212.3 PRE-TRIAL CONFERENCE.**

- (a) In addition to those matters for consideration at the Pre-Trial Conference held pursuant to Pa.R.C.P. 212.3, the court shall place the case on a civil court Jury Trial List, or set the date for the trial of a case without a jury.
- (b) An Order shall be entered following the pre-trial conference pursuant to Pa.R.C.P. 212.3(b). A copy of the Order shall be provided to the Court Administrator.
- (c) The Court Administrator shall place each case to be tried by a jury on a Jury Trial List for each civil court judge. The Jury Trial Lists will be posted on the Westmoreland County Web Site at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).

Note: Beginning with the January, 2015 Jury Trial List, copies will no longer be mailed to litigants and attorneys.

- (d) Each civil court judge shall call his Jury Trial List during the week preceding the first week of the civil jury trial period. All attorneys responsible for trial shall be represented at the call, and shall advise the court of the approximate length of the trial and disclose any other relevant matters.

- (e) The cases placed on the Trial List shall be continued only on the grounds and under the procedures set forth in Pa.R.C.P. 216. Applications for continuance shall be presented at Motions Court at least ten (10) days prior to the call of the Trial List. At the call of the Trial List or at any time thereafter, continuances will be granted only for the most compelling reasons; the need to schedule depositions shall not in itself be a compelling reason.

Note: Rule W212.3 replaces the former rule of the same number entitled "Settlement Conference."

Rescinded May 10, 2004; New Rule W212.3 adopted May 10, 2004, effective July 26, 2004. Rule W212.3(c) rescinded September 18, 2014; New Rule W212.3(c) and its associated Note adopted September 18, 2014, effective November 3, 2014.

Note: Rule W214 was rescinded effective December 16, 1997.

**RULE W227.1 POST-TRIAL RELIEF**

- (a) Requirements for Filing and Service of Motion for Post-Trial Relief at the Office of the Prothonotary.

- (1) The original Motion for Post-Trial Relief should be filed at the Office of the Prothonotary.

NOTE: Pursuant to Pa.R.C.P. 227.1(c), Motions for Post-Trial Relief must be filed within ten (10) days after verdict, etc.

NOTE: Post-Trial motions shall comply with Pa.R.C.P. 227.3 concerning the request for a transcript and objections thereto. See Pa.R.J.A. 5005.5, et seq., regarding the request for transcript and payment of the transcript fee.

- (2) At the same time the Motion for Post-Trial Relief is being filed with or mailed to the Prothonotary, the moving party shall present or mail a copy of the Motion for Post-Trial Relief to the chambers of the judge assigned to the case. The judge assigned to the case shall prepare a Scheduling Order for oral argument, file the original Order, and give or mail a copy of that Order to the moving party. Within three (3) days of receipt of the Scheduling Order from the judge assigned to the case, the moving party shall serve copies of the Scheduling Order on every other party or attorney of record, shall file with the Prothonotary a certificate of service of the Scheduling Order and shall mail or deliver a copy of the certificate of service to the judge assigned to the case.

NOTE: The oral argument should be scheduled on the date set for argument court in the second month following the month in which the verdict or decision was rendered.

- (3) Within three (3) days of filing the Motion for Post-Trial Relief, the moving party shall serve every other party or attorney of record with a copy of the Motion for Post-Trial Relief, shall file with the Prothonotary a certificate of service of the Motion for Post-Trial Relief and shall mail or deliver a copy of the certificate of service to the judge assigned to the case.
- (b) Filing and Service Requirements for Briefs in Support and in Opposition of the Motion for Post-Trial Relief
- (1) The moving party shall file a Brief in Support with the Prothonotary within twenty (20) days of filing the Post-Trial Motion, unless the court shall otherwise establish the briefing schedule. Any other party may file a Brief in Opposition within twenty (20) days after service of the moving party's brief.
  - (2) Within three (3) days of filing the Brief, the writer shall serve a copy of the Brief on every other party or attorney of record and shall mail or deliver a copy of the Brief to the chambers of the judge assigned to the case. The writer shall file a certificate of service with the Prothonotary, and shall mail or deliver a copy of the certificate of service to the chambers of the judge assigned to the case on the same day the certificate of service is filed.
- (c) Sanctions
- (1) Failure of the moving party to comply with the requirements of this rule shall result in the dismissal of the Motion.
  - (2) If a non-moving party shall fail to comply with the requirements of this rule, the party shall not be permitted to present any oral argument.

Rescinded May 10, 2004; New Rule W227.1 adopted May 10, 2004, effective July 26, 2004.

Note: Rule W227.2 was rescinded effective July 26, 2004.

Note: Rule W227.3 was rescinded effective March 27, 1995.

**RULE W229                    DISCONTINUANCE**

- (a) All costs of the Prothonotary and Sheriff shall be paid before a discontinuance is accepted by the Prothonotary.
- (b) The Prothonotary shall promptly give notice of the case's final termination to the Westmoreland County Court Administrator and to the assigned Judge when the case is discontinued.

Rescinded May 10, 2004; New Rule W229 adopted May 10, 2004, effective July 26, 2004.

**RULE W260                    IMPOUNDING MENTAL HEALTH FILES**

The prothonotary shall docket each action filed under the Mental Health Procedure Act of 1966, and impound the file and all papers contained therein. The prothonotary shall permit an inspection of the case file only pursuant to an order of court or upon request of the counsel for the party involved.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W261                      RECORDS**

- (a) The Court Administrator and members of a judge's staff may remove records from the Prothonotary's office for official court business. In addition, referees, auditors, masters, attorneys and other similar officers appointed by the court shall have authority to remove records from the Prothonotary's office. All such records shall be returned within three months after their taking unless the court authorizes a longer retention.
- (b) Except as provided in section (a), no record shall be removed from the Prothonotary's office except upon subpoena *duces tecum* or Order of court.

Adopted May 10, 2004, effective July 26, 2004.

Note: Rule W270 was renumbered W1270 August 31, 2000.

**RULE W300                      BROADCASTING, TELEVISIONING, PHOTOGRAPHS**

There shall be no broadcasting, televising, recording or the taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that the court may authorize:

- (a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
- (b) The broadcasting, televising, recording, or photographing of investiture, ceremonial, or naturalization proceedings;
- (c) The photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
  - (1) The means of recording will not distract participants or impair the dignity of the proceedings; and
  - (2) The parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and
  - (3) The reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
  - (4) The reproduction will be exhibited only for instructional purposes in educational institutions.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W405                    SHERIFF'S RETURN**

- (a) After successful service, the sheriff shall mail to the attorney requesting service a notification upon which the sheriff shall indicate the date, place and time of service and the person upon whom service was made, and in a case of service upon a corporation, the capacity of the person upon whom service was made.
- (b) After an unsuccessful attempt at service, the sheriff shall mail to the attorney requesting service a notification upon which the sheriff shall indicate the means by which service was attempted and the date on which the attempt was made.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W430                    LEGAL PERIODICAL**

The *Westmoreland Law Journal* shall be the legal periodical for the publication of all notices.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W609                    BILL OF COSTS**

- (a) A bill of costs listing those items sought to be recovered as record costs must be filed with the Prothonotary, within ten days of:
  - (1) the entry of a jury verdict;
  - (2) a final order, decree, or verdict of a judge sitting without a jury; or
  - (3) the day on which the Prothonotary makes the notation on the docket, pursuant to Pa.R.C.P. 1307(a)(3), that Notice of any Award including record costs has been mailed.
- (b) A certificate that a copy of the bill of costs has been served on the opposing party or that party's counsel of record shall be filed with the bill of costs.
- (c) Objections to items or amounts listed in the bill of costs must be filed by the opposing party or that party's counsel of record within 10 days of receipt of a copy of the bill of costs, in which event the trial judge, or judge assigned by the court administrator, shall enter an order specifying which costs are allowable.

COMMENT: See: *Zelenak v. Mikula*, 911 A. 2d. 542 (Pa. Super. 2006) as to what is included in record costs.

Absent an agreement between counsel regarding the payment of record costs, the court has no authority to award costs to either party upon settlement. *Mancine v. Bilesimo, Jr.*, 69 W.L.J. 145, 146 n.1 (1987).

With regard to recovery of cost in an arbitration case, see *Sillings v. Protected Home Mutual Life Ins. Co.*, 84 W.L.J. 7 (2001).

Rescinded December 3, 2007; New Rule W609 adopted December 3, 2007, effective January 21, 2008.

Note: Rule W611 was rescinded effective July 26, 2004.

### **ACTIONS AT LAW**

Note: Rule W1007 was rescinded effective July 26, 2004.

#### **RULE W1007.1 JURY TRIAL; DEMAND; WAIVER**

- (a) The party demanding a jury trial shall place on the pleading or other paper in which the demand is made, the words "JURY TRIAL DEMANDED," immediately below the docket number in the caption of the pleading or other paper.
- (b) The appellant in an arbitration appeal must indicate on the notice of appeal whether any party has previously demanded a jury trial or whether the appellant demands a jury trial through the appeal process. A copy of any written demand for a jury trial by the appellee must be served on the court administrator and the assigned judge.

Adopted December 16, 1993, effective April 1, 1994.

Note: Rule W1012 was rescinded effective July 26, 2004.

Note: Rule W1017.1 was repealed effective April 3, 1995.

#### **RULE W1018 CAPTION**

The caption for all matters filed in Divorce, Support, Custody, Partial Custody, Visitation, Asbestos and Medical Professional Liability shall be as follows:

- (a) The caption in Divorce matters shall be:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA

CIVIL ACTION – DIVORCE

- (b) The caption in Support matters shall be:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – SUPPORT

- (c) The caption in Custody, Partial Custody or Visitation matters shall be:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – CUSTODY

- (d) The caption in Asbestos matters shall be:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – ASBESTOS

- (e) The caption in Medical Professional Liability matters shall be:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – MEDICAL PROFESSIONAL LIABILITY ACTION

Rescinded November 14, 2005; New Rule W1018 adopted November 14, 2005, effective January 2, 2006.

**RULE W1018.1 NOTICE TO DEFEND**

The Lawyer Referral Service of the Westmoreland Bar Association is the agency to be named in the notice to defend from which legal help can be obtained. The contact information is:

Lawyer Referral Service  
Westmoreland Bar Association  
P.O. Box 565  
Greensburg, PA 15601  
(724) 834-8490  
<http://lrs.westbar.org>

Rescinded June 23, 2009; New Rule W1018.1 adopted June 23, 2009, effective August 17, 2009.

**RULE W1021 AD DAMNUM CLAUSE**

The ad damnum clause in any pleading shall state whether the damages are less than the maximum amount for compulsory arbitration (see Westmoreland County Rule of Civil Procedure W1301) set by this court.

Adopted December 16, 1993, effective April 1, 1994.

Note: Rule W1028 was rescinded effective July 26, 2004.

**RULE W1028(c) PRELIMINARY OBJECTIONS**

(1) Requirements for Filing and Service of Preliminary Objections at the Office of the Prothonotary

- (a) At the same time the Preliminary Objections are being filed with or mailed to the Prothonotary, the filing party, i.e., the objecting party, shall present or mail a **copy** of the Preliminary Objections to the chambers of the judge assigned to the case.

Note: Preliminary Objections seeking relief pursuant to Pa.R.C.P. 1028(a)(1), (5), (6), (7) or (8) shall be endorsed with a Notice To Plead.

- (b) Within three (3) days of filing the Preliminary Objections, the objecting party, shall serve that pleading on every other party or attorney of record and file a certificate of service.

(2) Filing and Service of Brief in support of Preliminary Objections

- (a) The objecting party shall file a Brief with the Prothonotary within thirty (30) days of filing the pleading if the Preliminary Objections only set forth grounds under subdivisions (2), (3) or (4) of Pa.R.C.P. 1028. Parties filing Preliminary Objections raising any ground other than under subdivisions (2), (3) or (4) of Pa.R.C.P. 1028 shall file a Brief within sixty (60) days of filing the Preliminary Objections, unless the court, on motion of any party, sets a briefing schedule to accommodate depositions or a hearing pursuant to 1028(c)(2).

Note: Preliminary Objections setting forth grounds other than under subdivisions (2), (3) or (4) of Pa.R.C.P. 1028 must be endorsed with a Notice to Plead or no response will be required under Pa.R.C.P. 1029(d). See Rule W210 for the form of the Brief.

- (b) The objecting party shall serve a copy of the Brief on every other party or attorney of record on the same day it is filed. A **copy** of the Brief, a certificate of service, together with a copy of any subsequent pleadings filed, shall be mailed or delivered to the chambers of the judge assigned to the case.

(3) Filing and Service of Brief in opposition to Preliminary Objections

- (a) A party to whom Preliminary Objections are directed shall file a Brief in opposition with the Prothonotary within thirty (30) days of being served with the objecting party's Brief.

Note: See Rule W210 for the form of the Brief.

- (b) Within three (3) days of filing the Brief in opposition, a party to whom Preliminary Objections are directed shall serve a copy of the Brief on every other party or attorney of record, and shall file a certificate of service with the Prothonotary.
- (c) A party to whom the Preliminary Objections are directed shall deliver or mail a **copy** of the Brief, along with a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate of service is filed.

(4) Oral argument

Oral argument will only be scheduled upon the presentation of a motion in accordance with the motions procedure in Rule W208.3(a).

(5) Sanctions

- (a) Failure of the objecting party to comply with the requirements of this rule shall result in the dismissal of the Preliminary Objections.
- (b) If a party to whom the Preliminary Objections are directed fails to comply with the requirements of this rule, that party shall not be permitted to present any oral argument.

Note: A party filing an amended complaint pursuant to Pa.R.C.P. 1028(c)(1) shall promptly notify the judge assigned to the case.

Rule W1028(c) shall not apply to family law actions governed by Pa.R.C.P. 1901 through 1940.9 or actions pursuant to the Eminent Domain Code of 1964.

Adopted May 10, 2004, effective July 26, 2004.

Note: Rule W1034 was rescinded effective March 27, 1995.

**RULE W1034(a) MOTION FOR JUDGMENT ON THE PLEADINGS**

- (1) Requirements for Filing and Service of a Motion for Judgment on the Pleadings and Supporting Brief at the Office of the Prothonotary
  - (a) The original Motion for Judgment on the Pleadings shall be filed with or mailed to the Prothonotary. A supporting Brief is required to be filed with a Motion for Judgment on the Pleadings.

Note: See Rule W210 for the form of the Brief.

- (b) A **copy** of the Motion for Judgment on the Pleadings and a **copy** of the supporting Brief required shall, at the time the Motion is filed or mailed, be presented or mailed to the chambers of the judge assigned to the case by the party filing the Motion. The judge assigned to the case shall prepare a Scheduling Order for oral argument, direct the filing of the original Order, and give or mail a copy of that Order to the moving party.
  - (c) Within three (3) days of receipt of the Scheduling Order from the judge assigned to the case, the moving party shall serve copies of the Motion for Judgment on the Pleadings, the Scheduling Order and the Brief on every other party or attorney of record.
  - (d) The moving party shall file with the Prothonotary a certificate of service of the Motion, the Scheduling Order and the Brief. A copy of the certificate of service shall be mailed or delivered to the judge assigned to the case.
- (2) Filing and Service requirements for Briefs in opposition to the Motion for Judgment on the Pleadings
- (a) A party to whom a Motion for Judgment on the Pleadings is directed shall file a Brief in opposition with the Prothonotary within thirty (30) days of service of the moving party's Motion and Brief.
- Note: See Rule W210 for the form of the Brief.
- (b) Within three (3) days of filing the Brief, the party to whom the Motion is directed shall serve a copy of the Brief on every other party or attorney of record, and shall file a certificate of service with the Prothonotary.
  - (c) The party to whom the Motion is directed shall deliver or mail a **copy** of the Brief, along with a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate of service is filed.
- (3) Sanctions
- (a) Failure of the moving party to comply with the requirements of this rule shall result in the dismissal of the Motion for Judgment on the Pleadings.
  - (b) If a non-moving party fails to comply with the requirements of this rule, that party shall not be permitted to present any oral argument.

Adopted May 10, 2004, effective July 26, 2004.

Note: Rule W1035 was rescinded effective July 26, 2004.

**RULE W1035.2(a) MOTION FOR SUMMARY JUDGMENT**

- (1) Requirements for Filing and Service of a Motion for Summary Judgment and Supporting Brief at the Office of the Prothonotary
  - (a) A party intending to file a Motion for Summary Judgment should note the requirements of Pa.R.C.P. 1035.2 that the Motion must be made after

completion of discovery relevant to the motion, including the production of expert reports, as well as after the relevant pleadings are closed. See the Explanatory Comment to Pa.R.C.P. 1035.2.

- (b) A supporting Brief is required to be filed with a Motion for Summary Judgment.

Note: See Rule W210 for the form of the Brief.

- (c) A **copy** of the Motion for Summary Judgment and a **copy** of the supporting Brief required, shall, at the time the Motion is filed or mailed, be presented or mailed to the chambers of the judge assigned to the case by the party intending to file the Motion. The judge assigned to the case shall prepare a Scheduling Order for oral argument, file the original Order, and give or mail a copy of that Order to the moving party.
- (d) Within three (3) days of receipt of the Scheduling Order from the judge assigned to the case, the moving party shall serve copies of the Motion for Summary Judgment, the Scheduling Order and the Brief on every other party or attorney of record.
- (e) The moving party shall file with the Prothonotary a certificate of service of the Motion, Brief and Scheduling Order. A copy of the certificate of service shall be mailed or delivered to the judge assigned to the case.

(2) Filing and Service requirements for Briefs in opposition to the Motion for Summary Judgment

- (a) Within thirty (30) days of service of the moving party's Motion and Brief, a party to whom a Motion for Summary Judgment is directed shall file a Brief in opposition, unless that party has requested and obtained an Order of court granting leave to supplement the record pursuant to Pa.R.C.P. 1035.3, in which event the court shall set a briefing schedule. If an Order granting such leave is not obtained, there shall be no extension of the thirty (30) day period for filing the Brief or continuance of the argument to allow supplementation of the record.

Note: See Rule W210 for the form of the Brief.

- (b) Within three (3) days of filing the Brief, a party to whom the Motion is directed shall serve a copy of the Brief on every other party or attorney of record and shall file a certificate of service with the Prothonotary.
- (c) A party to whom the Motion is directed shall deliver or mail a **copy** of the Brief, the required, specific response filed by that party pursuant to Pa.R.C.P. 1035.3, and a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate of service is filed.

(3) Sanctions

- (a) Failure of the moving party to comply with the requirements of this rule shall result in the dismissal of the Motion.
- (b) If a non-moving party shall fail to comply with the requirements of this rule, that party shall not be permitted to present any oral argument.

Adopted May 10, 2004, effective July 26, 2004.

Note: Rule W1047 was rescinded effective July 26, 2004.

**RULE W1041.1 ASBESTOS LITIGATION. SPECIAL PROVISIONS.**

- (1) Assignments. Upon the filing of a case in asbestos, the Prothonotary shall assign the case to one of the civil court judges, who will preside over all proceedings relating to the case, including, but not limited to, discovery motions, argument court and trial.
- (2) Captions. All pleadings, motions, briefs, memoranda and proposed orders shall include a caption conforming to Westmoreland County Rule of Civil Procedure W1018(d).
- (3) Case Management Orders. In all asbestos cases, the course of the litigation shall be governed by the terms of a case management order (CMO).
  - (a) Any party may, by motion, present a CMO to the Court for approval within sixty (60) days of the filing of the complaint. The proposed CMO shall set forth the actual dates on which each stage of the litigation must be completed.
  - (b) If no CMO is approved by the Court and filed of record at the expiration of sixty (60) days from the filing of the complaint, the Court will enter the following CMO:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – ASBESTOS

Plaintiff(s)	)	
vs.	)	No. ____ of 2____
Defendants	)	

CASE MANAGEMENT ORDER NO. \_\_\_\_

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, it is hereby ORDERED that:

1. This Case Management Order (CMO) is entered and is applicable to the above-captioned case pending in the Court of Common Pleas of Westmoreland County, Pennsylvania.
2. Plaintiff's Answers to Standard Short Form Interrogatories shall be served on all defense counsel within eight (8) months of the date of filing of the above action, specifically on \_\_\_\_\_, 200\_\_.
3. Discovery shall be completed within eighteen (18) months of the date of filing of the above action, i.e., on \_\_\_\_\_, 200\_\_.

4. All Motions for Summary Judgment shall be filed within twenty (20) months of the date of filing of the above action, i.e., on \_\_\_\_\_, 200\_\_, in accordance with Westmoreland County Rule of Civil Procedure W1035.2(a)(1).
5. Plaintiff's Responses to Motions for Summary Judgment shall be filed within twenty-one (21) months of the date of filing of the above action, i.e., on \_\_\_\_\_, 200\_\_, in accordance with Rule W1035.2(a)(2).
6. Plaintiff may thereafter file a Certification of Readiness for Trial pursuant to Rule W212.1.
7. Pursuant to Rule W212.1(c), upon the Court's receipt of the Certification of Readiness for Trial, the Court shall issue an Order addressing the deadlines for filing Pre-Trial Statements and Case-Specific Expert Reports, the date of the Pre-Trial Conference, and such other matters as may aid in the disposition of the case.
8. Following entry of such Order, the case shall proceed in accordance with Rule W212.3.
9. This Case Management Order may be modified by agreement of all parties (subject to Court approval) or by Court approval upon motion of any party for good cause shown.

BY THE COURT:

\_\_\_\_\_  
ASSIGNED JUDGE

- (4) Selection of Lead Defense Counsel.
  - (a) Within sixty (60) days of the filing of the complaint, defendants shall select one of their number to act as lead counsel for all defendants. Lead defense counsel shall notify the Court in writing of their selection to act as lead defense counsel within sixty (60) days of the filing of the complaint.
  - (b) In the event lead defense counsel ceases to act in that capacity, for any reason, during the course of litigation, the defendants shall select replacement lead counsel within thirty (30) days. Replacement lead defense counsel shall notify the court in writing of their selection to act as replacement lead defense counsel within thirty (30) days.
- (5) Filing of All Orders of Court. It is the responsibility of the moving party to file all original Orders in the Office of the Prothonotary unless a moving party receives notice from the Court that the Court has filed an original Order.
- (6) Service of All Orders of Court. It is the responsibility of the moving party to serve copies of all Orders upon all counsel of record in each case. If the Court serves copies of any Order, such service shall be made to counsel for the moving party, counsel for the plaintiff(s) and lead counsel for the defendants.

Note: Motions procedure is governed by Westmoreland County Rules of Civil Procedure W208.2(e) and W208.3(a).

Note: Argument court matters, such as preliminary objections, judgment on the pleadings, motions for summary judgment and motions for post-trial relief, are governed by Westmoreland County Rules of Civil Procedure W1028(c), W1034(a), W1035.2(a) and W227.1, respectively.

Adopted November 14, 2005, effective January 2, 2006.

**RULE W1270                    SPECIAL PROCEDURES RELATING TO BOARD OF VIEW  
PETITIONS**

All Petitions for the Appointment of a Board of View shall adhere to the following:

- (a) A designated judge shall hear all Petitions for the Appointment of Boards of View, whether or not a judge has been previously assigned to the case.
- (b) Any counsel who has entered an appearance for any condemnee shall be given four (4) days' advance notice of the date and time of submission of the Petition to the designated judge.
- (c) Upon filing of the Petition with Order Appointing Viewers attached, a new case number shall be assigned in the event that either the petition with order attached represents the initial filing in the proceeding or the Declaration of Taking initiating the proceeding condemned multiple properties.
- (d) It is intended that the same Board of View shall be appointed for all cases involving multiple properties in the same project (whether or not more than one Declaration of Taking has been filed) if the assessment of special benefits is applicable to the project.
- (e) After appointment of the Board of View, the original and one copy of the petition with order attached shall be filed with the prothonotary, who shall forward the copy to the chairperson of the Board of View appointed.

Adopted February 9, 1995, effective March 27, 1995. Renumbered from W270 August 31, 2000, effective October 23, 2000.

**RULE W1272                    APPEALS OF PROCEEDINGS UNDER THE EMINENT DOMAIN  
CODE**

Upon the filing of an appeal to the Court under 26 Pa.C.S.A. §517 where there are objections raised by the appeal other than to the amount of the award, the court upon motion of any party shall set a date for a hearing, briefing schedule, and a date for oral argument for preliminary disposition of the appeal in accordance with 26 Pa.C.S.A. §518. This provision shall pertain to all proceedings under the Eminent Domain Code and to proceedings in which the procedure provided under the Eminent Domain Code applies.

Rescinded August 24, 2011; New Rule W1272 adopted August 24, 2011, effective October 10, 2011.

**RULE W1274            LAND USE APPEALS**

- (a) Upon the filing of a land use appeal, the Prothonotary shall send to the governing body, zoning hearing board or agency whose decision has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, zoning hearing board, or agency, within twenty (20) days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken or a true and complete copy thereof, including but not limited to:
  - (1) transcripts of all testimony received at the hearing;
  - (2) all exhibits received at the hearing;
  - (3) the finding of fact and conclusions of law;
  - (4) notice of the decision.
- (b) In addition to the foregoing, the solicitor of the governing body, zoning hearing board, or agency whose decision has been appealed shall provide the court with a certified copy of the zoning or land development ordinance pertaining to the appeal.
- (c) Upon filing of the complete record, the solicitor of the governing body, zoning hearing board or agency whose decision has been appealed shall provide a written notice to the assigned judge, the parties or the counsel for the parties, and shall file a certificate with the prothonotary that the complete record had been filed.
- (d) Since in most cases the court will decide the appeal on the existing record, any party after the record has been filed may present to the assigned judge, with notice to all other parties, a proposed order setting a briefing schedule and a date for oral argument.

Adopted August 31, 2000, effective October 23, 2000.

**COMPULSORY ARBITRATION**

**RULE W1301            CASES FOR SUBMISSION TO ARBITRATION**

- (a) All civil cases including Landlord/Tenant and Replevin actions wherein the amount in controversy at issue (exclusive of interest and costs) is \$30,000 or less, shall be heard and decided by a board of arbitration consisting of three members of the bar. Cases involving title to real estate or actions in equity are excluded from arbitration.
- (b) The prothonotary shall, at the time the complaint is filed, assign a trial judge.
- (c) Complaint

- 1) Every complaint filed in Compulsory Arbitration, whether filed by a plaintiff against a defendant or by a defendant against an additional defendant, shall contain, in addition to the Notice to Defend required by Pa.R.C.P. 1018.1, a Notice of Duty to Appear at Arbitration Hearing immediately following the Notice to Defend which shall be in the form provided in Westmoreland County Rule of civil Procedure 1303(b).
  - 2) The plaintiff shall, at the time of filing a case subject to arbitration, provide the court administrator a copy of the State Cover Sheet Complaint. The party who files an appeal of a magisterial district judge's decision shall, at the time of filing the Notice of Appeal, provide the court administrator a copy of the Notice of Appeal. Any party filing a reinstatement of any case subject to arbitration as provided in subsection (a), shall, at the time of filing the Reinstatement, serve a copy of the Reinstatement on the court administrator.
- (d) Landlord/Tenant appeals shall be automatically scheduled by the court administrator upon receipt of the Cover Sheet. Parties to all other arbitration-eligible cases must file a Certificate of readiness.
- (e) The court, on its own motion or on motion of either party, may by depositions, settlement conference, hearing or otherwise, determine that the amount actually in controversy does not exceed \$30,000 (exclusive of interest and costs) and enter an order referring the case to arbitration.

Note: See W1312 for form, amount, and subject matter of awards.

Rescinded September 18, 2014; New Rule W1301 adopted September 18, 2014, effective January 1, 2015.

**RULE W1301.1 DISCOVERY IN ARBITRATION PROCEEDINGS**

- (a) A party to compulsory arbitration proceedings shall be limited, prior to the arbitration hearing, to the discovery hereinafter set forth, unless additional discovery is deemed necessary by counsel and is permitted by the court upon cause shown.
- (b) Depositions may be taken only in the following instances:
  - (1) Where the party or person to be examined is
    - (i) aged or infirm, or
    - (ii) about to leave this county for a place outside the Commonwealth or a place more than one hundred miles from the Westmoreland County Courthouse, or
  - (2) Upon other good cause shown.
- (c) Discovery must be completed no later than 10 days prior to the arbitration hearing. Failure to complete discovery within this period shall be deemed a waiver of

discovery prior to the hearing. Responses shall be made within the periods prescribed by the Pennsylvania Rules of Civil Procedure.

- (d) Discovery to any party shall be limited to the following, applicable fourteen interrogatories and requests for production of documents.

**Discovery Directed To Any Party**

TO THE [PLAINTIFF (s) \_\_\_\_\_]  
[DEFENDANT (s) \_\_\_\_\_]  
[ADDITIONAL DEFENDANT (s)] \_\_\_\_\_:

- (1) State your full name and address.
- (2) State the full names, present addresses and telephone numbers of witnesses to the incident described in the complaint and the names, present addresses and telephone numbers of witnesses who will be called to testify at the hearing.
- (3) It is requested that you produce any written statements, not subject to the attorney-client privilege, signed, adopted or approved by any witness; a written summary of any other statements (including oral statements), and identify any witness who has given a stenographic, mechanical, electrical or other recording that has not yet been transcribed.
- (4) It is requested that you produce all photographs, maps, drawings, diagrams, or other demonstrative evidence that may be introduced at the hearing or that may otherwise pertain to the lawsuit.
- (5) If this action arises from an accident involving your operation of a motor vehicle, state whether you were in any way impaired in the operation of the vehicle and produce a copy of your driver's license and the police accident report.

**Discovery Directed To A Party-Defendant**

- (6) State whether there is any insurance covering any defendant for the incident or matter described in the complaint. If so, list the name of each company providing coverage, together with the amount of coverage provided, and produce a copy of each declaration page.

**Discovery Directed To A Party-Plaintiff Claiming Personal Injuries**

- (7) Produce all medical documents, including hospital records, treating physician and chiropractic records, or authorizations concerning your injuries.

- (8) Disclose the name and address of each physician who treated you during the period from five (5) years prior to the incident to the present date.
- (9) Did you sustain injuries that resulted in work loss during the period from five (5) years prior to the incident to the present date? Answer “Yes” or “No”.
- (10) If the answer to Interrogatory 9 is “Yes,” state the date of the injury, the nature of the injury, and the dates of lost work.
- (11) If a claim is being made for lost income, state the name and address of your employer at the time of the incident, the name and address of your immediate supervisor at the time of the incident, your rate of pay, the dates of work loss due to the injuries from this accident, and the total amount of your work loss claim.

**Interrogatories That Apply Only To Personal Injury Claims Arising Out Of A Motor Vehicle Accident**

- (12) If you are making a claim for medical benefits or lost income, have you received or are you eligible to receive benefits from Workers’ Compensation or any program, group contract, or other arrangement for payment of benefits as defined by Title 75 P.S. §1719(b)? Answer “Yes” or “No”.
- (13) If the answer to Interrogatory 12 is “Yes”, set forth the type and amount of these benefits.
- (14) Are you subject to the “Limited Tort Option” or the “Full Tort Option” of automobile insurance coverage, as defined in Title 75 P.S. § 1705(a) and (b)?
  - \_\_\_ Limited Tort Option (no claim can be made for non-monetary damages)
  - \_\_\_ Limited Tort Option (claim can be made for non-monetary damages because the injuries fall within the definition of serious injury or because one of the exceptions set forth in 75 P.S. § 1705(d)(1) – (3) applies)
  - \_\_\_ Full Tort Option

Note: This rule does not affect the provisions or requirements of Pa.R.Civ.P. 1305.

Note: This rule does not preclude additional discovery under the Pennsylvania Rules of Civil Procedure in cases appealed pursuant to Pa.R.C.P. § 1308.

Adopted November 2, 2006, effective January 1, 2007.

**RULE W1302                      SELECTION OF ARBITRATORS**

- (a) The court administrator shall maintain a master list of arbitrators consisting of attorneys actively engaged in the practice of law primarily in Westmoreland County. The master list shall consist of names submitted by the Westmoreland Bar Association together with names of qualified attorneys who individually apply to the court administrator. The master list shall be maintained in alphabetical order, except for those submitted at a later date in which case they shall be added chronologically based upon the date of application. The master list shall indicate the attorney's name, bar admission date, identification number, and firm or association name.
- (b) The court administrator shall assign each case on the arbitration list to a board consisting of three members chosen from the master list. At least one arbitrator shall have practiced law for at least three years. No two members shall be appointed from the same firm or association of attorneys, nor shall an attorney be appointed to a board who shall be related by blood or marriage or who shall be a law partner or an associate of any arbitrator or attorney of record in the case. Any attorney who shall be disqualified for appointment to a board for any foregoing reasons, shall be appointed to another board for which he/she shall not be disqualified.
- (c) The court administrator shall not release the case assignments until the time of hearing, at which time it shall be assigned and the appropriate room in which it is to be heard shall be designated. The assigned judge or his designee may direct that a case be listed specially with appropriate notice to both parties.
- (d) The court will establish the amount and method of compensation for arbitrators. The members of the board shall not be entitled to receive their fees until after filing a report and award with the court administrator.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W1303            HEARING**

- (a) With the exception of Landlord/Tenant appeals, which will be scheduled on the first available date following 60 days from filing of the Complaint, the court administrator shall schedule the case for arbitration upon receipt of a Certificate of Readiness.
- (b) The court administrator shall, 30 days prior to the arbitration date, provide notice of the hearing date to the parties. The Notice shall, pursuant to Pa.R.C.P. 1303(a)(2), contain the following:

**Notice of Duty to Appear at Arbitration Hearing**

**This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.**

Note: This local rule results in the loss of the right to a trial de novo on appeal. A dismissal or judgment which results from this local rule will be treated as any other final judgment in a civil action, subject to Pa.R.C.P. 227.1.

- (c) A party must notify the court administrator in advance of scheduling in the event that party believes it will need more than forty-five minutes to present its case.
- (d) The court shall promulgate rules of procedure and rules of conduct to be followed by various boards of arbitration. These rules shall be available through the court administrator.
- (e) All requests for continuance shall be submitted on a form available through the court administrator. The court administrator may grant a maximum of two continuances provided there is no objection. Any additional continuances must be approved by the assigned judge.

Rescinded September 18, 2014; New Rule W1303 adopted September 18, 2014, effective January 1, 2015.

**RULE W1304                    CONDUCT OF HEARING – GENERALLY**

The board of arbitrators or a majority of the members thereof shall conduct the hearing with due regard to the law and according to the established rules of evidence. The board shall have the general powers of a court including administering oaths or affirmations, determining admissibility of evidence, permitting testimony to be offered by depositions, and deciding the law and the facts of the case submitted to them.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W1305                    CONDUCT OF HEARING – EVIDENCE**

Each document submitted pursuant to Pa.R.C.P. 1305(b) shall state the name and present address of the individual or entity who provided the information contained in the document.

Adopted December 16, 1993, effective April 1, 1994.

Note: Rule W1308 was rescinded effective January 1, 2007.

**RULE W1312                    AWARD**

- (a) The oath or affirmation shall be administered by the court administrator.
- (b) The Report and Award shall be in the form set forth in Pa.R.C.P. 1312.
- (c) Arbitrators may not award punitive damages.

- (d) Arbitrators may award costs.
- (e) Arbitrators may award possession in Landlord/Tenant matters.
- (f) Arbitrators may award possession and monetary value of the property or special damages sustained in a replevin action.
- (g) Monetary awards shall not exceed the jurisdictional limit of \$30,000 exclusive of interest and costs.

Note: A copy of the Form of Oath, Award and Notice of Entry of Award form is provided in the Forms section of the Westmoreland County Rules of Court.

Note: With regard to recovery of costs, see *Mancini v. Southwestern Pennsylvania Transportation Authority*, 756 A.2d 108, 110 (Pa. Cmwlth. 2000) and *Sillings v. Protected Home Mutual Life Ins. Co.* 84 W.L.J. 7 (2001).

Note: See: *Zelenak v. Mikula*, 911 A.2d 542 (Pa. Super. 2006) as to what is included in record costs.

Note: See: Comment to Pa.R.C.P. 1301 for awarding possession and damages in replevin cases.

Rescinded September 18, 2014; New Rule W1312 adopted September 18, 2014, effective January 1, 2015.

## **ACTION IN EQUITY**

### **RULE W1531            SPECIAL RELIEF. INJUNCTIONS**

Where a preliminary or special injunction (one needing immediate relief) is assigned to a judge who is unavailable, the Court Administrator (the civil division of the court administrator's office) shall reassign the case to a judge who is immediately available.

Rescinded May 10, 2004; New Rule W1531 adopted May 10, 2004, effective July 26, 2004.

## **ACTIONS FOR SUPPORT**

Note: Rules W1910.4 and 1910.5 were rescinded effective November 21, 2000.

### **RULE W1910.10        ALTERNATIVE HEARING PROCEDURES**

Actions in support shall proceed under Rule W1910.12.

Adopted October 7, 1996, effective December 2, 1996.

**RULE W1910.11 OFFICE CONFERENCE**

- (a) The noncustodial parent should be prepared to pay the accumulated support due (arrearages) at the time of the conference.
  - (1) All accumulated support due from the entry of the complaint is due immediately upon entry of the temporary or consent support order.
  - (2) Upon verification, credit towards accumulated support due may be given to the defendant for direct payments to the plaintiff made prior to or at the conference.
  - (3) If an order is not entered at the time of the conference, payment of accumulated support due up to the date the order is received is due immediately upon receipt of the order.
- (b) The filing of a Petition for a de novo proceeding before a hearing officer shall not stop payment of accumulated support due or payments pursuant to the temporary order.
- (c) When a wage withholding order is issued, the defendant shall make payments to the State Collection and Disbursement Unit (SCDU) until payroll deductions begin.

Adopted June 29, 2005, effective August 15, 2005.

**RULE W1910.12 OFFICE CONFERENCE. HEARING. RECORD. EXCEPTION. ORDER.**

- (a) Hearings
  - (1) Hearings before a hearing officer will not be scheduled unless demanded. No demand for a hearing officer will be accepted if an agreement is reached at the office conference.
  - (2) When demanding a hearing before a hearing officer, the demanding party must pay costs in the amount of \$50.00 to the domestic relations section. No hearing will be scheduled unless costs are paid within ten (10) days of the mailing of the interim order.
  - (3) The demanding party shall serve a copy of the demand for a hearing on the non-excepting counsel or party if not represented.
  - (4) The domestic relations section shall give each counsel or party if not represented notice of the date, time, and place of the hearing.
- (b) Exceptions
  - (1) Upon filing exceptions to the hearing officer's report, the excepting party shall:

- A. Serve on the domestic relations section a copy of the exceptions and deposit \$50.00 toward the cost of transcript preparation.
  - B. Serve a copy of the exceptions on the non-excepting counsel or party if not represented.
- (2) The domestic relations section shall:
- A. Notify the assigned judge, receive a time and date for the hearing on the exceptions, and notify all counsel of record, or parties, if not represented of the time and date of the hearing.
  - B. Bill the excepting party the balance of the transcription fee when the transcript is delivered.
- (3) Oral arguments shall be restricted to issues addressed in written briefs filed as follows:
- A. The excepting party must file a brief with a copy to the assigned judge and opposing counsel or party, if not represented, no later than 20 days before the hearing.
  - B. The non-excepting party must file a brief with a copy to the assigned judge and opposing counsel or party, if not represented, no later than 10 days before the hearing.

NOTE: The form of briefs is governed by W210.

Rescinded May 7, 2004; New Rule W1910.12 adopted May 7, 2004, effective June 1, 2004.

**RULE W1910.19      PETITION FOR MODIFICATION**

- (a) The domestic relations office will not accept for filing a petition which seeks any of the following without leave of court:
  - (1) To decrease a minimum order of \$50.00 or less; or
  - (2) To modify an order that is on appeal to the court pursuant to a recommended order; or
  - (3) To modify a support order because the petitioner has voluntarily left a job; or
  - (4) To modify an order which has been entered within the past six months.
- (b) The domestic relations office will provide notice of the refusal to the party seeking the modification.
- (c) Petitions filed for leave of court shall be presented to the court in accordance with Westmoreland County Rule of Civil Procedure W1920.6.
- (d) If leave of court is granted to file the petition for modification, the date of the first attempted filing shall be used as the filing date.

- (e) The petitioner shall pay a fee of \$25.00 to the domestic relations office with the filing of each petition for modification.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W1910.21 SUPPORT ORDER. ENFORCEMENT. WITHHOLDING OF INCOME.**

Pursuant to Pa.R.C.P. 1910.21(f), upon review of the Domestic Relations Section and without the need of a hearing, the DRS may administratively assess a payment of no more than 15% of the obligation toward any arrearages, current or future.

Adopted June 29, 2005, effective August 15, 2005.

Note: Rule W1910.26 was rescinded effective November 21, 2000.

Note: Rule W1910.27 was rescinded effective December 3, 2000.

Note: Rule W1910.39 was rescinded effective November 21, 2000.

**ACTIONS FOR CUSTODY, PARTIAL CUSTODY  
AND VISITATION OF MINOR CHILDREN**

Note: Rule W1915.1 was rescinded effective April 3, 2000.

**RULE W1915.3 COMMENCEMENT OF ACTION, COMPLAINT, ORDER.**

- (a) All actions raising issues of custody, partial custody, or visitation of minor children shall be commenced by the filing of a verified complaint or petition and a separate scheduling order as set forth in W1915.15. Forms are available at the Westmoreland Pro Bono Office on the fourth floor of the Westmoreland County Courthouse or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).
- (b) The petitioner shall, at the time of filing, proceed to the Westmoreland County Family Court Administrator (Custody Office) for an assignment of a date and time for the custody conciliation conference. The custody conciliation conference shall be scheduled for a date and time not later than 45 days after filing of the complaint or count.
- (c) The moving party shall file proof of service of the action with the Westmoreland County Prothonotary prior to the custody conciliation conference.

Rescinded March 25, 2013; New Rule W1915.3 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.3-5 PARTICIPATION IN PROCEEDINGS BY INCARCERATED PARTY.**

Any party to a custody action who is incarcerated and wishes to participate in any proceeding shall make a formal request to the Court for transportation to the proceeding or for participation by electronic means.

Adopted January 31, 2014, effective March 24, 2014.

**RULE W1915.4 CHILD PROGRAM.**

All parties shall be given an ORDER pursuant to this Rule to attend the Children Hurt in Loss Through Divorce/Separation (CHILD) Program prior to the Pretrial Conference, Modification Hearing, or Contempt Hearing, and to provide proof of attendance to the Court at the conference or hearing.

Rescinded January 31, 2014; New Rule W1915.4 adopted January 31, 2014, effective March 24, 2014.

Note: Rule W1915.4-1 was rescinded effective May 27, 2013.

Note: Rule W1915.4-2 was rescinded effective May 27, 2013.

**RULE W1915.4-3 CUSTODY CONCILIATION CONFERENCE**

- (a) Each party shall submit to the Westmoreland County Family Court Administrator (Custody Office) at the time of the conference a completed Westmoreland County Parent Information Form and proof of his or her most recent earnings. The Parent Information Form is available from the Westmoreland County Custody Office or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).
- (b) The parties may file with the family court administrator (custody office), an Election to Proceed Through Mediation. The party filing the Election to Proceed Through Mediation must Certify that all parties agree to mediation. Upon receipt of the Election and Certification, the family court administrator shall continue the scheduled Conciliation Conference, and inform the mediator to schedule the Mediation.
- (c) The parties may also at any time file a Consent Custody Agreement with the family court administrator (custody office). Forms are available from the Westmoreland Pro Bono Office on the fourth floor of the Westmoreland County Courthouse Annex or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).

- (d) If neither an Election to Proceed Through Mediation pursuant to subsection (b), nor a Custody Agreement pursuant to subsection (c) are filed with the family court administrator (custody office), the Conciliation Conference shall proceed as follows:
- (1) All parties, and any child, for whom custody or visitation is sought, shall be present at the Custody Conciliation Conference, unless otherwise ordered by the court. Failure of a party to appear at the Custody Conciliation Conference may result in the entry of a custody order by the Court on the recommendation of the custody conference officer in the absence of that party. The absent party may also be subject to contempt proceedings.
  - (2) The custody conference officer, who is an attorney, shall conduct the non-record, informal Conciliation Conference actively engaging the parties in order to reach an agreement. The parties are given the opportunity to present the issues or problems and to explore all available options for resolution.
  - (3) A Custody Agreement form is completed and signed when an agreement is reached.
  - (4) If the parties cannot agree, the custody conference officer will forward a report and recommended Order to the court.
    - A. The report shall contain the following:
      1. An indication that the parties consent to an evaluation including requirements such as physical or mental evaluations or home studies be undertaken pursuant to Rule W1915.8;
      2. Findings of fact on jurisdiction or venue issues; and
      3. Recommendations for custody.
    - B. The order will include all areas of prior agreement.
    - C. Except as provided in subsection D., the order shall become a final order unless a Request For Custody Pretrial Conference is filed within 30 days of the date of service of the order. A copy of the order shall be served in accordance with Pa.R.C.P. 236, with a copy to the family court administrator (custody office).
    - D. When the court orders an evaluation, the order will also direct that a Pretrial Conference be scheduled. The Request requirement of subsection C. does not apply when the Pretrial Conference is ordered.
    - E. The Request For Custody Pretrial Conference is available at the family court administrator (custody office) on the fourth floor of the Westmoreland County Courthouse Annex or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).

Rescinded March 25, 2013; New Rule W1915.4-3 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.4-4 JUDICIAL CUSTODY (PRETRIAL) CONFERENCE**

- (a) The Pretrial Narrative Form, which may be obtained from the custody office or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us), shall list all witnesses, including experts. It shall be completed by the parties or counsel and must be filed, submitted to the court, and served on the opposing party at least ten days prior to the Pretrial Conference.
- (b) All parties and any child for whom custody or visitation is sought shall be present at the Judicial Custody Conference unless either waived by the parties or their counsel, or permitted to be absent by court order. Failure of a party to appear at the Judicial Custody Conference may result in the entry of a custody/visitation order by the court.
- (c) The court shall attempt to obtain a Consent Custody Agreement on any pending custody issues. Any Agreement shall be reduced to writing and entered as an Order of Court.
- (d) If no agreement is reached, the court may enter a new Order pending the Custody Hearing and shall issue an Order listing the matter for trial.

Rescinded March 25, 2013; New Rule W1915.17 adopted March 25, 2013, effective May 27, 2013. Amended and renumbered September 20, 2016, effective 11/20/16.

Note: Rule W1915.7 was rescinded effective April 3, 2000.

**RULE W1915.8 PHYSICAL AND MENTAL EXAMINATION OF PERSONS**

- (a) The court may order Evaluations in accordance with Pa.R.C.P. 1915.8 on its own motion, if consented by the parties and indicated in the report of the custody conciliation officer, or in ruling on a motion or petition of either party. In the event an evaluation is ordered, a Pretrial Conference will be automatically scheduled.
- (b) Failure to pay for the examination as ordered may result in contempt proceedings and appropriate penalties as provided in Pa.R.C.P. 1915, et seq.

Rescinded March 25, 2013; New Rule W1915.8 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.10 REQUEST FOR CUSTODY PRETRIAL CONFERENCE. PRETRIAL CONFERENCE. DECISION.**

- (a) A party may file a Request for a Custody Pretrial Conference in the Westmoreland County Prothonotary's office anytime within 30 days from the date of service of a Custody Order issued as a result of a Conciliation Conference. Prior to filing the Request, the moving party shall deliver the Request to the chambers of the assigned judge for the scheduling of a Pretrial Conference. When Custody Evaluations have

been ordered, a Pretrial Conference is automatically scheduled and a Request need not be filed. (See: W1915.8(a).)

- (b) The moving party must serve a copy of the Request and signed Scheduling Order on the other counsel/parties, and on the family court administrator (custody office) within 3 days of receiving the signed Order. The Request For Custody Pretrial Conference and Scheduling Order are available at the Westmoreland County Custody Office on the fourth floor of the Westmoreland County Annex or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).

Rescinded March 25, 2013; New Rule W1915.10 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.12 ENFORCEMENT.CONTEMPT**

- (a) Upon filing of any motion or petition alleging violation of a custody or partial custody order, and seeking enforcement of the order, whether or not sanctions are requested, the Court shall direct the parties to appear before the Court for a 15 minute conference to conciliate the disagreement. All parties and their counsel shall appear for this conference.
- (b) If the enforcement request is not disposed of at the conciliation conference, the Court shall schedule an additional hearing before the Court to address the alleged violation.

New Rule 1915.12 adopted November 4, 2016, effective December 26, 2016.

**RULE W1915.13 SPECIAL RELIEF**

Motions for Special Relief will be screened before any hearing is scheduled. Special Relief may be denied without a hearing.

Rescinded March 25, 2013; New Rule W1915.13 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.15 FORM OF COMPLAINT. CAPTION. ORDER. PETITION TO MODIFY A PARTIAL CUSTODY OR VISITATION ORDER.**

Custody forms are available at the Westmoreland Pro Bono Office on the fourth floor of the Courthouse Annex or on-line at [www.co.westmoreland.pa.us](http://www.co.westmoreland.pa.us).

Rescinded March 25, 2013; New Rule W1915.15 adopted March 25, 2013, effective May 27, 2013.

**RULE W1915.17 RELOCATION**

- (a) A Complaint for Custody shall be filed prior to or simultaneously with the filing of any Notice of proposed relocation.
- (b) Any Notice proposing relocation shall comply with 23 Pa. C.S.A. §5337(c) and shall be filed with the Prothonotary prior to being served on all other parties. A copy shall also be served on the chambers of the assigned judge.

- (c) Any Objection to proposed relocation shall comply with 23 Pa. C.S.A. §5337(d) and shall be filed with the Prothonotary, served on all other parties, and together with a scheduling order for a relocation hearing, served upon the chambers of the assigned Judge.

Adopted February 10, 2012, effective April 2, 2012. Amended and renumbered September 30, 2016, adopted 11/20/2016.

Note: Rule W1915.19 that was adopted February 10, 2012, effective April 2, 2012 was renumbered to W1915.17 11/20/16. Rule W1915.19 no longer exists.

## **ACTIONS OF DIVORCE OR ANNULMENT OF MARRIAGE**

### **RULE W1920.4 SERVICE; NOTICE**

- (a) When service is made within the Commonwealth by registered or certified mail, restricted delivery, return receipt requested, service shall not be valid if the return receipt is not signed by the defendant personally. The return receipt card shall be attached to the affidavit of service.
- (b) When a special order for service is sought, a motion, or petition shall be presented to the court, setting forth what attempts have been made to serve the defendant, as well as the nature and extent of the good faith investigation to locate the defendant.
- (c) The affidavit of service required under section 3301(d) of the Divorce Code may be served with the complaint.
- (d) The affidavit of service must set forth with particularity the pleadings, attachments and documents so served.

Adopted December 16, 1993, effective April 1, 1994.

### **RULE W1920.6 MOTIONS; NOTICE**

- (a) Written notice of presentation of a petition or motion which requires action by a judge or master, other than the scheduling of a hearing date, shall be mailed to the other party's counsel, or to the other party if unrepresented, at least 4 days prior to presentment of the petition or motion. Notice shall be substantially in the form prescribed by WF1920.6.
- (b) Reasonable notice is required when the relief sought is a preliminary injunction.

Note: A copy of the Notice of Presentation form is provided in the Forms section of the Westmoreland County Rules of Court.

Adopted December 16, 1993, effective April 1, 1994.

Note: Rule W1920.12 was rescinded effective August 17, 2004.

**RULE W1920.31 JOINDER OF RELATED CLAIMS**

All financial data and statements required by Pa.R.C.P. 1920.31 shall be filed and served in accordance with Westmoreland County Rule of Civil Procedure W1920.50 concerning the "All Counts Conference."

Adopted December 16, 1993, effective April 1, 1994.

**RULE W1920.32 JOINDER OF RELATED CLAIMS. CUSTODY. HEARING BY COURT.**

- (a) All Complaints containing a Custody Count and all Counts of Custody filed separately must be accompanied with a scheduling order found at W1915.15. The order shall be processed in accordance with W1915.3.
- (b) The Custody Count shall follow the practice and procedures governing Custody.

Rescinded February 3, 2000; New Rule W1920.32 adopted February 3, 2000, effective April 3, 2000.

**RULE W1920.33 JOINDER OF RELATED CLAIMS. DISTRIBUTION OF PROPERTY. ENFORCEMENT.**

- (a) Each party in all cases in which a master has been appointed shall file a pre-trial statement, pursuant to Pa.R.C.P. 1920.33(b). The original pretrial statement shall be filed with the prothonotary within 20 days of receipt of the order appointing the master. Each party shall serve copies of the pretrial statement on the master and opposing counsel, or on the unrepresented adverse party, by first class mail on the same day as filing.
- (b) The exhibit list as set forth in [item 6 above] Pa.R.C.P. 1920.33(b)(4) shall be served in duplicate and shall be in substantially the following format:

Exhibit List			
Description	Stipulated Authentic	Stipulated Admissible	Objection
A.			
B.			
C.			
D.			
etc. ...			

- (c) Each party shall have 10 days from the date of receipt of the exhibit list to complete the exhibit list and to return the list to the other party.

- (d) Failure to comply with this rule may be enforced by sanctions, with attorney's fees costs and expenses to be determined by the master or court.

Rescinded May 7, 2004; New Rule W1920.33 adopted May 7, 2004, effective June 1, 2004.

**RULE W1920.42 AFFIDAVIT AND DECREE UNDER SECTION 3301(c) OR SECTION 3301(d) OF THE DIVORCE CODE**

- (a) Affidavits required by Sections 3301(c) and 3301(d) of the Divorce Code shall be notarized.
- (b) The court may require a hearing before the entry of a decree in divorce under sections 3301(c) or 3301(d) of the Divorce Code.
- (c) Where both parties have filed affidavits under section 3301(c) of the Divorce Code evidencing consent to the entry of a final decree, the plaintiff shall file at the prothonotary a Pennsylvania vital statistics form, an affidavit of non-military service of defendant, and a proposed decree in divorce. Upon receipt of a praecipe to transmit the record, the prothonotary shall deliver all of the papers filed at that number and term to the court for entry of the decree in divorce. The proposed decree in divorce shall include a clause retaining jurisdiction in the court of all other related claims that have been joined, and which have not been decided by the court as of the date of the presentation of the proposed decree in divorce.
- (d) If a complaint has been filed requesting a divorce on the grounds of irretrievable breakdown and the plaintiff has filed an affidavit under section 3301(d) of the Divorce Code, the averments of which the defendant has either admitted or not denied; the plaintiff shall send written notice to the court and to the defendant at his/her last known address. The notice shall be sent at least 10 days in advance of the time and date the plaintiff intends to file the praecipe to transmit the record required by Pa.R.C.P. 1920.42.
  - (1) The plaintiff shall also file the Pennsylvania vital statistics form, an affidavit of non-military service of defendant, a proposed decree in divorce, and an affidavit that notice was sent to the defendant as required above. The proposed decree in divorce shall include a clause retaining jurisdiction in the court of all other related claims which have been joined and which have not been decided by the court as of the date of the presentation of the proposed decree in divorce.
  - (2) If the defendant does not object within the time allotted, the court may either enter a decree in divorce, or schedule a hearing.
- (e) If the defendant objects and raises new legal or factual issues, a hearing shall be held before the court or a master, as the court may direct.

Adopted December 16, 1993, effective April 1, 1994. Rule W1920.42(a) rescinded October 28, 2015; new rule adopted October 28, 2015, effective December 21, 2015.

**RULE W1920.50 ALL COUNTS CONCILIATION CONFERENCE**

- (a) After completion of discovery and prior to the appointment of a master to take testimony on remaining issues pursuant to W1920.51, and after filing "Addendum A" substantially in the form prescribed by WF1920.50, and any attachments; the court shall order, upon the request of either party, an all counts conciliation conference.
- (b) Either party may request an all counts conciliation conference by presenting or mailing to the family court administrator a Motion to Schedule All-Counts Conciliation Conference, Order, and a copy of Addendum A and any attachments. Upon receipt of the Motion to Schedule All Counts Conciliation Conference and Order, the family court administrator shall note the day and time of the conference on the original order, forward the motion and order to the court for signature, and file the original motion and order with the prothonotary. After filing the original motion and order, the family court administrator shall mail a copy of the motion and order to the moving party. The moving party shall then serve the non-moving counsel or party, if not represented, with a copy of the motion and order, Addendum A, and any attachments. A copy of the forms and attachments shall be served on the opposing counsel or party, if not represented, and on the family court administrator.
- (c) In the event a party opposes the scheduling of the all counts conciliation conference, the party that wants an all counts conciliation conference may file and present to the Court a motion to proceed.
- (d) The non-moving party shall file their Addendum A and any attachments at least twenty (20) days prior to the scheduled conference, and serve a copy of Addendum A and any attachments on the moving counsel or party, if not represented, and on the family court administrator.
- (e) Both parties shall submit a written proposal for settlement at the time of the conference.
- (f) Failure to file the required forms, attachments and proposals may result in sanctions.

Note: This rule requires the completion of an All Counts Conciliation Conference worksheet for submission with the written proposal for settlement. A sample of the Motion to Schedule All Counts Conciliation Conference and Order and the forms included in "Addendum A", including the Income and Expense Statement, Inventory and Appraisal of Property and Marital Asset and Liability Summary forms are provided in the Forms section of the Westmoreland County Rules of Court.

Rescinded May 7, 2004; New Rule W1920.50 adopted May 7, 2004, effective June 1, 2004.

**RULE W1920.51 HEARING BY THE COURT; APPOINTMENT OF MASTER; NOTICE OF HEARING**

- (a) Before any certificate of appointment shall be issued by the prothonotary to any master in those cases initiated by an uncontested complaint in annulment, or a section 3301(a) or (b) divorce, or where an agreement has been reached by the parties on any such other claims that have been raised by the parties, the plaintiff shall deposit the sum of \$138.00 with the prothonotary; \$113.00 of the deposit shall be minimum fee for the master, and \$25.00 shall be minimum fee for the stenographer. In addition, the plaintiff shall pay the prothonotary's fee. The court may order additional compensation for the master their report is filed.
- (b) In all other cases, before any certificate of appointment shall be issued by the prothonotary to any master, the party moving for the appointment shall deposit an initial sum of \$248.00 with the prothonotary; \$223.00 shall be a minimum fee for the master, and \$25.00 shall be a minimum fee for the stenographer. In addition, the moving party shall pay the prothonotary's fee. The initial deposit of \$248.00 shall be for one-half days' work. For each half day thereafter the master shall receive a minimum fee of \$150.00; and for each half day of transcribing, the stenographer shall receive a minimum fee of \$20.00. The master shall certify the time expended to the court. The master may petition the court for additional compensation after the report is filed.
- (c) No master shall be appointed if a complaint in divorce has been filed under section 3301(c) or (d) and no issues other than divorce are raised.

Note: Subsection (c) expands the prohibitions found at Pa.R.C.P. 1920.51(2)(ii) to include all Section 3301(d) divorces when divorce is the only issue raised.

- (d) The master shall give the attorneys for each party at least 10 days' written notice of the time and place of taking testimony and of the claims the master will hear. If there is no appearance entered on behalf of the defendant, the master shall give notice to the defendant by registered mail, return receipt requested at the last known address of the defendant.

Note: See Pa.R.C.P. 1920.33(b) and W1920.33 for requirements regarding the mandatory filing of a pre-trial statement.

Rescinded May 7, 2004; New Rule W1920.51 adopted May 7, 2004, effective June 1, 2004.

Note: Rule W1920.51(4) was rescinded effective June 1, 2004.

**RULE W1920.51a HEARING BY THE COURT. ALL COUNTS MASTER. NOTICE OF HEARING**

All interim issues in a divorce action including the claim of alimony *pendente lite*, counsel fees, costs and expenses, and injunctive relief, when appointed to a master, shall be heard by the permanent all counts master.

- (a) The all counts divorce master may address the amount of child support if the amount is consented to by the parties. If the parties do not agree to the amount of

child support, the all counts divorce officer shall only take testimony on the claim of child support at the direction of the court, or in the event the support-hearing officer certifies a conflict.

- (b) The all counts divorce master shall take testimony on claims for child support, alimony *pendente lite*, or counsel fees and expenses prior to taking testimony on any other claims.
- (c) In the event the master does not complete taking testimony on all issues, the master shall prepare a report and order for those issues resolved or consented to, and schedule the remaining issues for a date and time certain. Exceptions may be filed pursuant to Pa.R.C.P. 1920.55-2 and W1920.55-2a.

Adopted May 7, 2004, effective June 1, 2004.

**RULE W1920.53 HEARING BY MASTER. REPORT.**

Subject to the direction and control of the court, the court appointed master shall have the usual powers of a referee in equity in regard to the detention of witnesses for examination and the general course of the proceedings. The master shall rule on objections to the competency or relevancy of testimony. If the master sustains the objection the testimony shall not be heard or reported. Parties may file exceptions to the master's rulings.

Rescinded May 7, 2004; New Rule W1920.53 adopted May 7, 2004, effective June 1, 2004.

**RULE W1920.54 HEARING BY MASTER. REPORT. RELATED CLAIMS.**

Subject to the direction and control of the court, the all counts divorce master shall have the usual powers of a referee in equity in regard to the detention of witnesses for examination and the general course of the proceedings. The master shall rule on objections to the competency or relevancy of testimony. If the master sustains the objection the testimony shall not be heard or reported. Parties may file exceptions to the master's rulings.

Rescinded May 7, 2004; New Rule W1920.54 adopted May 7, 2004, effective June 1, 2004.

Note: Rule W1920.55-1 was rescinded effective June 1, 2004.

**RULE W1920.55-2 MASTER'S REPORT. NOTICE. EXCEPTIONS. FINAL DECREE.**

- (a) The excepting party shall serve a copy of exceptions on the family court administrator when filing the original exceptions to the report of a master appointed pursuant to W1920.51. Upon receiving exceptions pursuant to Pa.R.C.P. 1920.55-2(b) and (c), the family court administrator shall immediately schedule a hearing, mail notices of the hearing date to the parties by first class mail, and forward its copy of the exceptions to the assigned judge.

- (b) The excepting party must file briefs with the assigned judge no later than 20 days before the hearing, and the non-excepting party must file its brief with the assigned judge no later than 10 days before the hearing.
- (c) Oral argument shall be restricted to issues addressed in written briefs.
- (d) If no party files Exceptions to the Master's Report within 20 days of the date of receipt or the date of mailing of the report, whichever occurs first, the prothonotary shall immediately deliver the file to the court for entry of the decree.
- (e) Unless otherwise directed by the Court, the prothonotary shall pay no master's fee until the master files the report and transcript of testimony. Failure of the master to file the report as required shall result in a forfeiture of the master's fee, and the prothonotary will refund the fee to the party who paid it.

Rescinded May 7, 2004; New Rule W1920.55-2 adopted May 7, 2004, effective June 1, 2004. Rule W1920.55-2(d) rescinded April 16, 2009. New Rule W1920.55-2(d) adopted April 16, 2009, effective June 1, 2009.

**RULE W1920.55-2a ALL COUNTS MASTER'S REPORT. NOTICE. EXCEPTIONS. FINAL DECREE.**

- (a) The all counts master's shall report pursuant to Pa.R.C.P. 1920.55-2.
- (b) When filing the original exceptions to an all counts master's report with the prothonotary, the excepting party shall also serve a copy on the family court administrator. The family court administrator shall immediately schedule the hearing on the exceptions upon receipt of the exceptions and the fifty (50) dollars deposit towards completion of the transcript required by subsection (c) below. The court administrator shall mail notices of the hearing date to the parties by first class mail before forwarding its copy of the exceptions to the assigned judge.
- (c) The excepting party must request the transcript and make a deposit of fifty (50) dollars towards the preparation of the transcript pursuant to Pa.R.J.A. 5000.5 and 5000.6. The final cost of the transcript will be billed against the excepting party at a rate of \$2.00 per page less the fifty (50) dollars deposited. Failure to request or pay for the transcript may result in dismissal of the exceptions.
- (d) The excepting party must file briefs with the assigned judge no later than 20 days before the hearing, and the non-excepting party must file its brief with the assigned judge no later than 10 days before the hearing.
- (e) Oral arguments shall be restricted to issues addressed in written briefs.
- (f) If no party files exceptions within 20 days of the date of receipt or the date of mailing of the report, whichever occurs first, the order shall be final.

Adopted May 7, 2004, effective June 1, 2004. Rule W1920.55-2a(f) rescinded April 16, 2009. New Rule W1920.55-2a(f) adopted April 16, 2009, effective June 1, 2009.

Note: Rule W1920.63 was rescinded effective April 16, 2001.

**RULE W1940.1 VOLUNTARY MEDIATION**

- (a) The parties may agree to mediate custody and visitation matters before a neutral mediator. The parties are responsible to pay for mediation services. Mediation shall be conducted in accordance with Pa.R.C.P. 1940-1 et. seq.
- (b) All matters before the mediator shall remain confidential except as provided at 42 Pa.C.S.A. § 5949(b). Confidentiality may be waived in writing by the parties.
- (c) All agreements shall be reduced to writing and submitted to the court.
- (d) The Westmoreland County Family Court Administrator (Custody Office) shall provide the mediators with dates and times for which to schedule a Conciliation Conference for those who have not succeeded through mediation. The mediator shall immediately schedule by Notice those who have not settled through Mediation. The date and time scheduled for the conciliation conference shall forthwith be reported by phone or facsimile to the family court administrator (custody office).

Rescinded March 25, 2013; New Rule W1915.4-4 adopted March 25, 2013, effective May 27, 2013. Amended and renumbered September 20, 2016, effective 11/20/16.

**RULE W1940.4 MINIMUM QUALIFICATIONS OF THE MEDIATOR**

Mediators shall certify, on a form supplied by the Family Court Administrator, compliance with the minimum qualifications specified in Pa.R.C.P. 1940.4.

Adopted February 3, 2000, effective April 3, 2000.

Note: Rule W1960 was rescinded effective May 25, 2010.  
Rule W1940.1 that was adopted February 3, 2000, effective April 3, 2000 was amended September 30, 2016.

**ACTIONS FOR WRONGFUL DEATH**

**RULE W2205 NOTICE TO PERSONS ENTITLED TO DAMAGES**

Whenever notices are sent pursuant to Pa.R.C.P. 2205, a certificate of service of such notices shall be promptly filed in the prothonotary's office, setting forth the names and addresses of the persons to whom the notices were sent.

Adopted December 16, 1993, effective April 1, 1994.

**JOINDER OF PARTIES**

Note: Rule W2227 was rescinded effective July 26, 2004.

**RULE W2232 DEFECTIVE JOINDER. CHANGE OF PARTIES**

- (a) Notice under Pa.R.C.P. No. 2232(a) to a person required to join in an action as a party plaintiff pursuant to Pa.R.C.P. No. 2228 shall be given within thirty (30) days of service of the complaint on the defendant.
- (b) The notice shall be made using the following form:

**NOTICE OF PENDING ACTION**

To \_\_\_\_\_ (*Name of spouse or parent*)

You are hereby notified that \_\_\_\_\_ (*Name of Plaintiff*) has commenced this action against me to recover damages arising from personal injuries to \_\_\_\_\_ (*Name of person injured*) occurring on \_\_\_\_\_ (*state date and sufficient facts to identify the occurrences causing the injuries*).

You are hereby directed to join in this action as a party plaintiff within thirty (30) days if you desire to assert against me any claim for damages arising therefrom. **IF YOU FAIL TO JOIN THIS ACTION, YOUR CLAIM WILL BE BARRED (LOST) AND THE CASE WILL PROCEED WITHOUT YOU.**

\_\_\_\_\_ (*Defendant*)

- (c) The defendant shall serve the notice in accordance with the procedures provided in Pa.R.C.P. No. 402.

Rescinded May 10, 2004; New Rule W2232 adopted May 10, 2004, effective July 26, 2004.

Note: Rule W2253 was rescinded effective July 26, 2004.

**ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**RULE W3129 NOTICE OF SALE; REAL PROPERTY**

- (a) All writs and certified copies of orders certified from the record by the prothonotary directing judicial sales of real estate shall be filed with the sheriff not less than 60 days before the date of sale and shall be accompanied by:
  - (1) Four typewritten copies of a notice containing the information required in Pa.R.C.P. 3129.2 on a form which shall be provided by the sheriff for the purpose of preparing handbills and for publication pursuant to Pa.R.C.P. 3129.2(d); and

- (2) One typewritten copy of the full legal description of the property on a format which shall be provided by the sheriff for the purpose of preparing a deed.
  - (3) The Writ of Execution shall contain the full legal description of the property.
- (b) In all judicial sales of real estate, the following conditions shall apply:

CONDITIONS OF SALE

Successful bidders shall pay ten percent of the bid in either cash, certified check, or cashier's check at the time of the sale, and the balance prior to 11:00 a.m. of the due date supplied by the sheriff. The property will be resold if the balance is not paid by the due date. All money paid in at the original sale shall be applied to any deficiency in the price at which property is resold. If the sale has been previously adjourned to this date, the successful bidder shall pay the full amount of the bid at the time of sale. If the successful bidder is the plaintiff in the writ of execution, the entire amount of the bid shall be paid in 10 days. If plaintiff fails to pay the purchase money, the sheriff may return the writ "Real Estate Unsold" stating in the return that the sale was held pursuant to the writ, that the plaintiff was the successful bidder at the sale, that the plaintiff failed to pay the bid and complete the sale, and that the plaintiff shall thereupon forfeit all moneys advanced. Such forfeited advanced money shall be applied by the sheriff first to costs on the writ and second to liens in order of their priority. A bid of \$1.00 shall constitute a bid of costs and the amount of any municipal claims due.

In addition to price, all successful bidders are bound and required to pay the county realty transfer tax which is required for the purpose of recording the deeds. Pursuant to 72 P.S. 8100-C, et seq., the 1% Pennsylvania realty transfer tax will be paid by the sheriff from the proceeds of the sale. Purchasers must record their own deeds and pay the necessary recording fees.

Pursuant to Pa.R.C.P. 3136, notice is hereby given that a schedule of distribution will be made in accordance with the schedule unless exceptions are filed thereto, within 10 days thereafter. No further notice of the filing of the schedule of distribution is required.

- (c) Judicial sales of real estate shall be held on the first Monday of the following months: January, March, May, July, September, and November. If any of those days fall on a legal holiday, the sale shall be held on the Tuesday immediately following.
- (d) Persons other than the sheriff serving the notice of sale pursuant to Pa.R.C.P. 3129.2, shall file their original affidavits of service with the prothonotary and a copy with the sheriff not less than 15 days prior to the sale date.

Adopted December 16, 1993, effective April 1, 1994.

**DEPOSITIONS AND DISCOVERY**

Note: Rule W4001 was rescinded effective August 3, 2016.

**RULE W4002 PLACE OF DEPOSITIONS**

If the parties do not agree, the place of the taking of any deposition of a non expert shall be in the Westmoreland County Courthouse or the Westmoreland Bar Association Headquarters in Greensburg, Pennsylvania, unless the court otherwise directs.

Revised August 22, 1994, effective October 10, 1994.

**RULE W4005 WRITTEN INTERROGATORIES**

Any party filing written interrogatories on any other party shall forthwith serve a notice thereof with the prothonotary and each party or attorney of record. The moving party shall also serve copies of the interrogatories on any other party if requested.

Adopted December 16, 1993, effective April 1, 1994.

**GENERAL RULES**

**RULE W6001 Rules Governing Appeals from Real Estate Tax Assessments.**

The following provisions shall govern all tax assessment appeals from decisions of the Board of Assessment Appeals:

(a) Parties.

(1) The following parties must be listed in the caption of the appeal:

- (i) owner(s) of the real estate and/or taxable property;
- (ii) the Westmoreland County Board of Assessment Appeals;
- (iii) the municipality in which the property is located;
- (iv) the school district in which the property is located; and
- (v) the County of Westmoreland.

(2) Any entity that has an interest in the appeal in addition to those set forth in subsection (a) (1) of this Rule may enter an appearance, subject to the objection of any party listed in aforesaid subsection. Such entity must provide notice of its appearance to all other parties within five (5) days of its entry.

(b) Caption.

(1) The party filing the appeal to court shall be designated as the appellant. The Board of Assessment Appeals shall be designated as the appellee. All other parties set forth

above at (a) shall be designated as interested parties. The Tax Map Number assigned to the parcel that is the subject of the appeal shall be listed below the appellant/appellee/interested parties. The Tax Map Number shall be listed in the format shown on the forms appended to this Rule and contain 15 digits and include dashes. The Prothonotary shall index each appeal by each party and the Tax Map Number. The caption shall be in a form substantially similar to the example appended to this Rule.

(c) Time For and Content of Appeals.

(1) An appeal from the decision of the Board of Assessment Appeals must be verified by the owner or other appropriate party and filed with the Prothonotary within thirty (30) days of the date of mailing of the notice of decision by the Board.

(2) An appeal shall contain the following:

- (i) names of the parties;
- (ii) identification of the property by address;
- (iii) a reference to the source of ownership for, or interest in, the parcel designated by the Tax Map Number;
- (iv) a concise statement of the reasons for the appeal; and
- (v) a copy of the decision of the Board of Assessment Appeals.

(3) No Order of Court is required to file an appeal.

(d) Notice.

Within five (5) days from the date of filing a tax assessment appeal, the appellant shall serve a copy of the appeal upon all other parties including the Board, the County, the municipality, and the school district in which the real estate is situate; and upon the property owner, if the owner is not the appellant. Service shall be by certified mail, return receipt requested and by first class mail, postage pre-paid or personal service by hand delivery and acceptance by the served party. A certificate of service shall be filed by the serving party within ten (10) days of said service.

(e) Withdrawal of Appeals.

No appeal may be withdrawn without the consent of all other parties or by leave of court.

(f) Motions.

(1) All motions in real estate tax assessment appeals shall be presented to the Judge assigned to the case by the Court Administrator.

(2) The Appellant shall provide to the Court a proposed order for a status conference within forty-five (45) days from the date of service of the appeal upon the Board of Assessment Appeals. The Appellant shall provide the Court with a self-addressed, envelope, postage

pre-paid, in which the Court will return the executed original order to said Appellant. Upon receipt of the order scheduling the status conference, the Appellant shall promptly file the original order with the Prothonotary and serve a copy of the order on all parties and/or each attorney of record by first class mail. A Certificate of Service showing the same shall be filed with the Prothonotary within ten (10) days of said service. All parties must appear personally or through counsel at the status conference. At that time the Court may issue a scheduling order that includes, but is not limited to, a time for the exchange of any expert reports and a time for the completion of discovery. The Court will schedule a settlement conference or set a trial date for the appeal. The proposed order shall be in a form substantially similar to the example appended to this Rule.

(g) Discovery.

- (1) Discovery pursuant to the Pennsylvania Rules of Civil Procedure is specifically authorized during an appeal from an assessment fixed by the Board of Assessment Appeals.

#### Explanatory Note

The Pennsylvania Rules of Civil Procedure are not applicable to tax assessment appeals except as specifically authorized by the county Local Rules of Court. See Appeal of Borough of Churchill, 575 A.2d 550, 525 Pa.80 (1990)]

(h) Trial.

- (1) When discovery is completed, the appellant shall request the assigned judge to schedule the appeal for trial.
- (2) Upon the request of the appellant, the Court shall schedule the trial for a date certain.
- (3) In the event the appellant fails to request a date certain for trial of the appeal, upon the motion of any party or upon the judge's own motion, the Court may enter an order setting the date for trial.
- (4) A motion to continue the trial shall be presented to the Court at least two weeks prior to the date scheduled for trial. In deciding such a motion for continuance, the Court will consider the grounds set forth in Pa. R.C.P. No. 216.

IN CASES THAT HAVE BEEN INACTIVE FOR AN UNREASONABLE PERIOD OF TIME, ON MOTION OF ANY PARTY THE COURT MAY ISSUE A RULE TO SHOW CAUSE WHY THE APPEAL SHOULD NOT BE TERMINATED. THE COURT UPON RETURN OF SAID RULE MAY TERMINATE INACTIVE CASES PURSUANT TO THE STANDARDS AND PROCEDURES ARTICULATED IN PA. R.C.P. NO. 230.2.

Adopted March 1, 2002, effective April 22, 2002, revised and adopted August 3, 2016.

Note: Rule W6001.1 was rescinded effective March 1, 2002.

Note: Rule W6001.2 was rescinded effective March 1, 2002.

**RULE W6007                    APPROVAL OF SURETIES**

No lawyer, court employee, deputy, clerk or other such officer shall execute any bond as security in any action or matter pending in court, except by written leave of the court.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W6017                    DEPOSITORIES**

On the payment of money into court for any purpose, the same shall be deposited at interest in such bank as the court may designate, to the credit of the court in the particular case, and shall be drawn out only upon an order of the court attested by the prothonotary.

Adopted December 16, 1993, effective April 1, 1994.

**RULE W6027                    STATUTORY OR LICENSE SUSPENSION APPEALS**

- (a) All statutory or license suspension appeals shall be commenced by the filing of a petition.
- (b) If a supersedeas or stay is not automatically granted by the filing of the petition, the petitioner shall present the assigned judge an unsigned order of court granting the supersedeas or stay and setting a date and time of the hearing.
- (c) If a supersedeas or stay is automatically granted by the filing of the petition, the petitioner shall, within thirty (30) days of the filing of the petition for appeal, file a signed order setting a date and time of the hearing. Failure to file the signed order may, upon motion of the opposing party, result in the dismissal of the petition.

Adopted April 11, 1996, effective June 3, 1996.

Note: Rule W6082 was rescinded effective October 10, 1994.

**WESTMORELAND COUNTY RULES OF CRIMINAL PROCEDURE**

**TABLE OF RULES**

Rule WC112            Publicity, Broadcasting, and Recording of Proceedings .....  
Adopted December 16, 1993, effective April 1, 1994. Revised and  
renumbered from WC328 May 10, 2001, effective July 2, 2001.

Rule WC113            Notices .....  
Adopted May 10, 2001, effective July 2, 2001.

Rule WC114            Orders and Court Notices: Filing; Service; and Docket Entries.....  
Rescinded September 8, 2004; New Rule WC114 adopted September 8,  
2004, effective November 1, 2004. Rescinded August 17, 2015, New Rule  
WC114 adopted August 17, 2015.

Rule WC117            Coverage: Issuing Warrants; Preliminary Arraignments and  
Summary Trials; and Setting and Accepting Bail.....  
Adopted June 12, 2006, effective August 1, 2006.

Rule WC119            Expunging Criminal Records .....  
Adopted May 4, 2004, effective June 21, 2004.

Rule WC120            Attorneys – Appearances and Withdrawals .....  
Repealed October 1, 1998; New Rule WC302 adopted October 1, 1998,  
effective February 22, 1999. Renumbered from WC302 May 10, 2001,  
effective July 2, 2001.

Rule WC150            Bench Warrants .....  
Adopted July 13, 2006, effective August 28, 2006.

Rule WC300            Accelerated Rehabilitative Disposition in Summary Cases .....  
Rescinded August 7, 2001; New Rule WC300 adopted August 7, 2001,  
effective September 24, 2001.

Rule WC319            Procedure for Obtaining Order for Dismissal Upon Successful  
Completion of the Program .....  
Adopted May 4, 2004, effective June 21, 2004.

Rule WC431            Procedure When Defendant Arrested With Warrant.....  
Adopted June 12, 2006, effective August 1, 2006.

Rule WC462            Trial De Novo .....  
Adopted April 20, 2006, effective June 5, 2006.

Rule WC511            Notice Concerning the Rights to Counsel in Cases Initiated by  
Summons .....  
Repealed October 1, 1998; New Rule WC112 adopted October 1, 1998,  
effective February 22, 1999. Revised and renumbered from WC112 May  
10, 2001, effective July 2, 2001.

Rule WC520            Bail Before Verdict.....  
Adopted June 12, 2006, effective August 1, 2006.

Rule WC529            Modification of Bail Order Prior to Trial .....  
Rescinded March 5, 2013; New Rule WC529 adopted March 5, 2013,  
effective April 22, 2013.

Rule WC530            Duties and Powers of a Bail Agency; Pretrial Services Unit .....  
Revised July 1, 1996, effective August 19, 1996. Renumbered from  
WC4010 May 10, 2001, effective July 2, 2001.

Rule WC531	<b>Qualifications of Surety</b> ..... Adopted December 16, 1993, effective April 1, 1994; Section (d)(7) adopted December 16, 1995, effective January 15, 1996. Renumbered from WC4006 May 10, 2001, effective July 2, 2001.
Rule WC541	<b>Waiver of Preliminary Hearing</b> ..... Adopted December 16, 1993, effective April 1, 1994. Revised and renumbered from WC140A May 10, 2001, effective July 2, 2001.
Rule WC542	<b>Preliminary Hearings</b> ..... Rescinded July 30, 2006; New Rule WC542 adopted July 30, 2006, effective September 18, 2006.
Rule WC546	<b>Dismissal Upon Satisfaction or Agreement</b> ..... Adopted December 16, 1993, effective April 1, 1994. Revised and renumbered from WC145 May 10, 2001, effective July 2, 2001.
Rule WC551	<b>Withdrawal of Prosecution</b> ..... Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC151 May 10, 2001, effective July 2, 2001.
Rule WC568	<b>Bench Warrants</b> ..... Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC330 May 10, 2001, effective July 2, 2001.
Rule WC569	<b>Transport Orders</b> ..... Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC331 May 10, 2001, effective July 2, 2001.
Rule WC570	<b>Pretrial Conference</b> ..... Adopted December 8, 2005, effective March 1, 2006.
Rule WC571	<b>Arraignment</b> ..... Adopted December 16, 1993, effective April 1, 1994; Section (a) revised February 22, 1994, effective April 18, 1994; Sections (d) and (h) revised June 30, 1995, effective August 21, 1995. Revised and renumbered from WC303 May 10, 2001, effective July 2, 2001.
Rule WC576	<b>Filing and Service by Parties</b> ..... Rescinded September 8, 2004; New Rule WC114 adopted September 8, 2004, effective November 1, 2004.
Rule WC579	<b>Time for Omnibus Pretrial Motion and Service</b> ..... Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC307 May 10, 2001, effective July 2, 2001.
Rule WC601	<b>Presence of Judge</b> ..... Adopted May 10, 2001, effective July 2, 2001.
Rule WC717	<b>Substance Abuse Education and Demand Reduction Fund</b> ..... Adopted May 6, 2015, effective July 6, 2015.

**RULE WC112 PUBLICITY, BROADCASTING, AND RECORDING OF PROCEEDINGS**

Broadcasting, televising, recording or taking photographs of any type anywhere in the courthouse during the progress of or in connection with any criminal judicial proceeding is prohibited.

Adopted December 16, 1993, effective April 1, 1994. Revised and renumbered from WC328 May 10, 2001, effective July 2, 2001.

**RULE WC113 NOTICES**

- (a) The court administrator is responsible for preparing and mailing all required notices of court proceedings to counsel for the defendant or to the unrepresented defendant. The notice shall be mailed first class or delivered through another means to the counsel of record or unrepresented defendant at the address then-listed in the Westmoreland Criminal Justice Information System.
- (b) The defendant or counsel of record is responsible for informing the clerk of courts of any known change of address for the defendant. Any department or agency who has been informed of a change of address by the defendant or counsel, shall inform the clerk of courts on a Change of Information Form. The clerk of Courts shall enter any change of address into the Westmoreland Criminal Justice Information System within 24 hours of receipt of the Change of Information Form.

Adopted May 10, 2001, effective July 2, 2001.

**RULE WC114 ORDERS AND COURT NOTICES; FILING; SERVICE; AND DOCKET ENTRIES**

- (A) Pursuant to Pa.R.Crim.P. 114(A)(1) and (2), warrants, court orders, and court notices shall be docketed and placed in the criminal case file within two working days of receipt.
- (B) Pursuant to Pa.R.Crim.P. 114 (B), the Westmoreland County Court Administrator is designated to serve court notices. The Westmoreland County Clerk of Courts shall serve all Orders.
  - 1. The Court Administrator shall place in the mail or otherwise serve all notices within two working days of printing.
  - 2. The Clerk of Courts shall give a copy of all Court Orders to the Defendant or to the deputy sheriff who has custody of the defendant when the defendant reports to the Clerk of Courts. A copy of all such Court Orders that affect a defendant's custodial status shall also immediately be sent by facsimile transmission or by other electronic means to the Records Division of the Westmoreland County Prison.

3. The Clerk of Courts shall serve all Court Orders not covered by Subsection (B)(2) by placing such orders in the mail or by other means listed in Pa.R.Crim.P. 114 (B)(3) within two working days of filing.

**Comment:** This Rule is promulgated pursuant to the responsibility given the president judge by Pa.R.Crim.P. 116

Rescinded September 8, 2004; New Rule WC114 adopted September 8, 2004, effective November 1, 2004.  
Rescinded August 17, 2015, New Rule WC114 adopted August 17, 2015.

**RULE WC117                    COVERAGE: ISSUING WARRANTS; PRELIMINARY  
ARRAIGNMENTS AND SUMMARY TRIALS; AND SETTING AND  
ACCEPTING BAIL.**

- (a) After hours coverage shall be provided by a magisterial district judge, assigned on a rotational schedule, who has county-wide jurisdiction and who operates between the hours of 4:00 p.m. to 10:00 p.m. Monday through Friday. Holidays and weekend coverage shall be provided by an assigned on-call magisterial district judge.
  - (1) The “duty” magisterial district judge will hold court by video conferencing available from any approved advanced communication technology site. The magisterial district court office will remain closed to the public during after hours coverage except at the discretion of the magisterial district judge.
  - (2) In the event a magisterial district judge is needed when the court is not scheduled for after hours coverage for the issuance of a search or arrest warrant, a protection from abuse petition, or other emergency matter; the “duty” magisterial district judge will be contacted through Westmoreland 911.
  - (3) Procedures for executed summary warrants shall be pursuant to Pa.R.Crim.P. 431, and Westmoreland Rule of Criminal Procedure WC431.
- (b) Monetary bond may be posted outside of regularly scheduled daily work hours at the county police desk at the Westmoreland County Courthouse. Bail bond agents may continue to post bond at the Westmoreland County Prison.

Adopted June 12, 2006, effective August 1, 2006.

**RULE WC119                    EXPUNGING CRIMINAL RECORDS**

- (a) Expungement under “The Controlled Substance, Drug, Device and Cosmetic Act,” 35 P.S. §§ 780-1 et seq.
  - (1) Pursuant to 35 P.S. § 780-119, the criminal records for any individual charged under The Controlled Substance, Drug, Device and Cosmetic Act who is subsequently found not guilty or for whom the charges are withdrawn or dismissed may apply for expungement of records by filing a Petition for Expungement of Criminal Records (Non ARD) found in the Forms section of these local rules.

- (2) The Westmoreland County Adult Probation and Parole Department shall initiate a Petition to Expunge records associated with a Probation Without Verdict Order when the defendant completes the program. The form shall be routed to the Westmoreland County District Attorney for certification, and forwarded by the district attorney to the court for the purpose of signing an order.
- (b) Expungement under “The Criminal History Record Information Act,” 18 Pa.C.S.A. §§ 9101 et. seq.
- (1) Petitions for Expungement of criminal history record information pursuant to 18 Pa.C.S.A. § 9122, shall be initiated when the defendant files a Petition and Order for Expungement of Criminal Records (Non ARD) found in the Forms section of these local rules, or by filing a petition containing the information required under Pa.R.Crim.P. 722.
  - (2) The clerk of courts shall provide the Westmoreland County District Attorney and the Westmoreland County Court Administrator with a copy of the Petition.
  - (3) The court administrator will forward the expungement petition and order to the trial judge thirty (30) days after the defendant files the petition. The court will direct the court administrator to schedule argument on the petition if the commonwealth files an objection within thirty (30) days of the filing of the petition; otherwise, the court will order expungement of the criminal history record.

Adopted May 4, 2004, effective June 21, 2004.

**RULE WC120                    ATTORNEYS – APPEARANCES AND WITHDRAWALS**

- (a) An entry of appearance may only be filed on either a Waiver of Arraignment or on a Praecept for Appearance. An attorney will not be noticed regarding motions, court hearings, or trials unless the attorney enters an appearance.
- (b) Once an appearance is entered, the attorney will remain counsel of record until removed from the case by court order.
  - (1) In the event of a guilty plea or acceptance into the ARD program, the court will entertain private counsel’s motion to withdraw at the time of sentencing or at the time of acceptance into the ARD Program. If the motion is granted, the private counsel and the defendant shall sign a Certificate of Withdrawal which shall be forwarded to the clerk of courts as a part of the official record.
  - (2) In order for the court to consider a petition for withdrawal of privately retained counsel subsequent to the imposition of sentence and pending appeal, counsel seeking to withdraw must provide the court with the defendant’s completed application for a public defender, an executed Certificate of Withdrawal, and a summary of the bases for appeal. The court may direct the appointment of trial counsel to pursue the intended appeal at the applicable court-appointed counsel rate.

Repealed October 1, 1998; New Rule WC302 adopted October 1, 1998, effective February 22, 1999. Renumbered from WC302 May 10, 2001, effective July 2, 2001.

**RULE WC150            BENCH WARRANTS**

- (a) Whenever an individual is committed to the Westmoreland County Prison pursuant to a bench warrant issued by a Westmoreland County judicial officer, the Warden or designee, shall promptly, or in no case later than the beginning of the next business day, notify the court administrator who shall:
  - (1) schedule a bench warrant hearing, and
  - (2) notify the district attorney, defense counsel of record, sheriff and probation office.
- (b) Pursuant to Pa. R. Crim. P. 150(A)(4), whenever an individual is committed to the Westmoreland County Prison pursuant to a bench warrant issued by a judicial officer outside of Westmoreland County, the Warden or designee, shall promptly notify the proper authorities in the county of issuance.
- (c) Any judge of the Court Of Common Pleas Of Westmoreland County may conduct a bench warrant hearing if the judge who issued the bench warrant is unavailable. Any Westmoreland County magisterial district judge may conduct a bench warrant hearing if the magisterial district judge who issued the bench warrant is unavailable.
- (d) The Westmoreland County Warden shall release an individual held on a bench warrant by operation of law if the bench warrant hearing does not occur within 72 hours of commitment or by the close of the next business day if the 72 hours expires on a non-business day. The president judge shall advise the warden of any days in addition to weekends or holidays that are non-business days.

Adopted July 13, 2006, effective August 28, 2006.

**RULE WC300            ACCELERATED REHABILITATIVE DISPOSITION IN SUMMARY CASES**

- (a) The District Attorney of Westmoreland County has filed a certification, and has elected that ARD in summary cases proceed before the Minor Judiciary pursuant to Pa.R.Crim.P. 300 and 301. The following summary charges are certified eligible for Summary ARD.
  - (1) Retail theft. 18 Pa.C.S.A. § 3929(a), (b)(1)(i).
  - (2) Purchase, consumption, possession or transportation of intoxicating beverages by one less than 21 years of age. 18 Pa.C.S.A. § 6308.
  - (3) Misrepresentation of age to secure liquor or malt or brewed beverages by one less than 21 years of age. 18 Pa.C.S.A. § 6307.
  - (4) Carrying a false identification card. 18 Pa.C.S.A. § 6310.3

- (b) Admission shall be requested within ten (10) days of receipt of the citation or summons. The District Justice for good cause may grant extensions of the application period. The District Justice shall determine eligibility for summary ARD within seventy-two (72) hours of the submission of the application.
- (c) No defendant who has previously been placed in an ARD program in any court shall be admitted to ARD in a summary matter.
- (d) Prior to placing a defendant in the Summary ARD Program, the District Justice shall determine that the defendant has not previously been placed in ARD in a summary matter in this judicial district by contacting the Court Administrator.
- (e) A defendant who applies for ARD in a summary matter shall execute the following:

*AFFIDAVIT*

*I have not previously been placed in an ARD program in any court at either the Common Pleas or District Justice level. I make this statement subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.*

\_\_\_\_\_

Date

\_\_\_\_\_

Name

- (f) Costs of supervision and restitution must be paid in full before admission to the Summary ARD program. These costs include court costs incident to a non-traffic summary offense and any costs incident to the program to which the defendant is referred.
- (g) The defendant shall be notified in writing of acceptance or rejection from ARD.
  - (1) If accepted, the defendant shall appear at a time designated by the District Justice to complete all program documentation.
  - (2) If rejected, the District Justice shall notify the defendant that he/she has ten days to enter a plea and that the case will proceed under Chapter 4 of the Pennsylvania Rules of Criminal Procedure.
- (h) The District Justice shall schedule and notify the defendant at the time of admission to ARD of a hearing date to determine if all ARD requirements have been met. The hearing shall be held within ninety days of the entry into ARD. Requests for continuance of said hearing shall be denied, except in compelling circumstances. No continuance shall be for more than seven days.
- (i) A defendant accepted into ARD for retail theft shall be referred to the Allegheny Institute's Retail Theft Alternative Program. A defendant accepted for the alcohol-related offenses shall be referred to the Comprehensive Substance Abuse Services' Underage Drinking Program. Successful completion of the program shall be required.
- (j) The following are the reporting and record keeping requirements under this Rule:

- (1) The District Justice shall make every effort to assure that the defendant has not previously participated in the Summary ARD program.
- (2) Each District Justice shall file a report on a monthly basis setting forth the disposition and completion or non-completion of all program requirements with the Court Administrator. If a defendant eligible for ARD is not admitted, the District Justice shall include the reasons therefore in the report.
- (k) Upon successful completion of all requirements, the defendant's case shall be dismissed and the defendant discharged.
- (l) If the defendant declines ARD or fails to successfully complete the program, the case shall proceed in accord with Chapter 50 of the Pennsylvania Rules of Criminal Procedure.
- (m) No summary case shall remain "active" for purposes of ARD supervision in excess of ninety days.
- (n) The following shall be displayed in each District Justice office:

NOTICE TO THOSE CHARGED WITH SUMMARY RETAIL  
THEFT OR UNDERAGE ALCOHOL-RELATED OFFENSES

*You may be eligible to participate in a program (ARD) which will result in dismissal of the charge against you. The ARD program is available for defendants who have not previously been placed into an ARD program. You must pay all costs and restitution before admission to the ARD program. You will be required to attend a counseling program for up to ninety (90) days. If you successfully complete the program, the charge against you will be dismissed. If you want to apply for the ARD program, notify the District Justice immediately.*

BY THE COURT:

\_\_\_\_\_ PJ

Rescinded August 7, 2001; New Rule WC300 adopted August 7, 2001, effective September 24, 2001.

Note: Rule WC310 was repealed effective May 10, 2001.

**RULE WC319                    PROCEDURE FOR OBTAINING ORDER FOR DISMISSAL UPON  
SUCCESSFUL COMPLETION OF THE PROGRAM**

- (a) Petitions for dismissal of charges and expungement of records pursuant to successful completion of the ARD program are found in the Forms section of these local rules. The probation and parole officer shall notify the defendant when the conditions of the ARD have been satisfied, and shall advise the defendant of the opportunity to file for dismissal of charges and expungement of the record.
- (b) All other petitions for expunging criminal records shall be pursuant to WC119.

Adopted May 4, 2004, effective June 21, 2004.

**RULE WC431                   PROCEDURE WHEN DEFENDANT ARRESTED WITH WARRANT**

- (a) In lieu of bringing a summary offender before the magisterial district judge when a summary warrant is executed, in addition to the options provided in Pa.R.Crim.P. 431, the arresting officer shall serve a Subpoena to Appear if a Subpoena has been issued by the magisterial district judge.
- (b) The hours of 6:00 a.m. to 10:00 p.m. provided for in Pa.R.Crim.P. 431(A)(2) are not extended. Any arrest made outside these specified hours shall be handled pursuant to subsection (a).

Adopted June 12, 2006, effective August 1, 2006.

**RULE WC462                   TRIAL DE NOVO**

- (a) Absent an indication on the Summary Appeal Order of the number of days in which payment is due, the Clerk of Courts will set the payment due date as 30 days from the date of the Order.
- (b) In the event of a withdrawal or dismissal of the appeal, the Clerk will enter the payment due date pursuant to the Summary Appeal Order or, if the Order is silent as to the due date, any magisterial district judge payment schedule forwarded with the record. Absent any due date on the Summary Appeal Order or magisterial district judge time payment schedule, the due date will be set as 30 days from the date of the Summary Appeal Order to enter judgment on the judgment of the magisterial district judge.
- (c) The Clerk of Courts will establish a due date of thirty days from the effective date of this rule for all summary cases then in the system with amounts due and no due date otherwise indicated.
- (d) The Clerk of Courts will enforce nonpayment of restitution, costs, fees, and fines in summary cases primarily through the Clerk's collection system of notification letters and then through a collection agency.

Adopted April 20, 2006, effective June 5, 2006.

**RULE WC511                   NOTICE CONCERNING THE RIGHTS TO COUNSEL IN CASES  
INITIATED BY SUMMONS**

Pursuant to Pa.R.Crim.P. 510, in all cases where a criminal action is initiated by a summons, the district justice shall mail the following notice to the defendant with the summons:

“You have an absolute right to be represented by a lawyer. A lawyer should represent you at the preliminary hearing. It is, therefore, suggested that you do one of the following:

1. Hire your own lawyer.
2. If you are financially unable to hire your own lawyer, you should apply to the Westmoreland County Public Defender’s Office, Westmoreland County Courthouse, Greensburg, Pennsylvania 15601, (724) 830-3535, where a lawyer may be appointed to represent you free of charge.
3. If you are financially able to hire a lawyer but do not know one, you should contact the Lawyer Referral Service at the Westmoreland Bar Association, 129 N. Pennsylvania Ave., Greensburg, Pennsylvania 15601, (724) 834-8490.”

Repealed October 1, 1998; New Rule WC112 adopted October 1, 1998, effective February 22, 1999. Revised and renumbered from WC112 May 10, 2001, effective July 2, 2001.

Note: Rule WC518 was rescinded effective July 17, 2006.

**RULE WC520 BAIL BEFORE VERDICT**

Monetary bond may be posted outside of regularly scheduled daily work hours at the county police desk at the Westmoreland County Courthouse. Bail bond agents may continue to post bond at the Westmoreland County Prison.

Adopted June 12, 2006, effective August 1, 2006.

**RULE WC529 MODIFICATION OF BAIL ORDER PRIOR TO TRIAL**

- (a) Prior to presenting a petition to the court seeking a bond reduction, the defendant shall present the petition to the district attorney who shall indicate whether the Commonwealth consents to or opposes the petition. If the Commonwealth consents to the petition, the petition shall be served directly upon the assigned judge. If the assigned judge is unavailable, the petition shall be served upon the court administrator who shall attempt to find an alternate judge to hear the petition.
- (b) In the event that the Commonwealth opposes the petition, the petition shall be served upon the court administrator who shall schedule a hearing as soon as possible before the assigned trial judge.
- (c) The defendant shall indicate on any petition to the court to modify bail prior to the preliminary hearing whether or not the defendant first applied for modification of bail from the presiding magisterial district.
- (d) Any criminal defendant with charges alleging a child victim, having an active case before the Westmoreland County Children’s Bureau with an Order of Supervised Visitation with that child victim, shall:

- (1) notify the Westmoreland County Children's Bureau upon receiving a nonmonetary condition of bail of "No Contact With The Victim,"
- (2) provide the Westmoreland County Children's Bureau a copy of any Petition to Modify Bail seeking to permit contact with the child victim for the purpose of supervised visitation,
- (3) provide the Westmoreland County Children's Bureau a copy of any Order granting bail modification to permit supervised visitation.

Rescinded March 5, 2013; New Rule WC529 adopted March 5, 2013, effective April 22, 2013.

**RULE WC530                    DUTIES AND POWERS OF A BAIL AGENCY; PRETRIAL SERVICES UNIT**

- (a) The Pretrial Services Unit of the Westmoreland County Adult Probation and Parole Department shall monitor and assist defendants released on bail. The duties and powers of the Unit shall include the following:
  - (1) gathering information about defendants relevant to bail decisions;
  - (2) making recommendations to the bail authorities concerning the types of release and the conditions of release on bail for individual defendants.
  - (3) supervising defendants when so designated by the bail authority;
  - (4) making reasonable rules and regulations to implement the bail agency's function.
- (b) The representative of the Unit who obtains information from the defendant shall, both orally and in writing, advise the defendant that anything said to the Unit representative may be used against the defendant.
- (c) The Pretrial Services Unit shall disclose information obtained from or concerning the defendant only to the defendant, counsel for the defendant, the issuing authority or judge setting bail, the attorney for the Commonwealth, and the Westmoreland County Department of Adult Probation and Parole. This information may be used in preparing an intermediate punishment screening, in a presentence report, in a prosecution based on the falsity of the information, or for impeachment purposes to the extent permitted by law.
- (d) The Unit is authorized to assess reasonable fees for the use of any electronic monitoring equipment utilized in the course of supervision. The fee shall be assessed based upon the financial ability to pay.
- (e) The Unit is authorized to initiate bond revocation proceedings when warranted.

Revised July 1, 1996, effective August 19, 1996. Revised and renumbered from WC4010 May 10, 2001, effective July 2, 2001.

**RULE WC531                    QUALIFICATIONS OF SURETY**

Actual net value of realty that is issued as bail in Westmoreland County is to be computed by subtracting from the fair market value the unpaid balance of each encumbrance as of the date of the posting of the real estate.

To determine the current fair market value of realty, according to the State Tax Equalization Board, multiply the current assessment by the current common level ratio factor.

A professional bondsperson, shall be licensed by the Commonwealth of Pennsylvania as required under Chapter 57, Subchapter B of the Judicial Code, 42 Pa.C.S. Sections 5741-5749, and before acting as a surety in any proceeding pending before any of the courts of this judicial district shall provide security of (a) cash, (b) real estate, or (c) a corporate surety, as follows:

(a) **Cash**

- (1) A professional bondsperson may post cash with the clerk of courts as security for bail to be written, and the clerk shall give the bondsman a receipt. The clerk shall immediately deposit all sums into a federally insured interest bearing account. The clerk shall pay accrued interest to the bondsperson annually, less any amount the clerk is authorized by law to retain.
- (2) The professional bondsperson may at any time, upon thirty days written notice, and upon presentation and surrender of the receipt, withdraw the whole or any part of the cash deposited that is not required for bail then written and outstanding, less any penalty for early withdrawal charged by the financial institution in which the clerk has deposited said sum less any amount the clerk is authorized by law to retain.
- (3) The professional bondsperson may at any time, increase the cash on deposit with the clerk. The clerk shall keep a proper accounting of all deposits and withdrawals.

(b) **Real Estate**

A professional bondsperson may use his/her real estate located in Pennsylvania as collateral for his/her bonds. He/she shall annually certify to the clerk of courts, under oath, a list of all of the real estate owned by him/her in Westmoreland County. Such certification shall include:

- (1) A description of each tract of real estate, and its location in the county and the deed book volume and page where the deed is recorded.
- (2) Attached to the certification shall be a sworn statement as to the fair market value of the real estate which shall be determined by multiplying the current assessment by the current common level ratio. Additionally, attach a certification from the county board of assessment appeals indicating the current assessment valuation.
- (3) A certification by an attorney who practices in the Commonwealth, or a title insurance policy certifying the encumbrances, mortgages and liens against the real estate, and the unpaid balance of each encumbrance as of the date of the statement.

(c) **Surety**

- (1) The professional bondsperson who uses a surety must file annually a surety bond by a bonding company licensed to do business in the Commonwealth of Pennsylvania setting forth the amount for which said surety will undertake on behalf of said bondsperson.
- (2) Within 10 days after any change in ownership, encumbrance, or surety, the professional bondsman shall notify the clerk of courts by filing a revised certification as set forth above.

(d) **Procedure**

- (1) When the professional bondsperson files with the clerk of courts the above described certification, the clerk of courts shall provide to said bondsperson a certificate authorizing him to do business in the Westmoreland County. Said certificate shall be under seal of the clerk of courts and shall include a certification of the amount of bond which the professional bondsperson is authorized to write. Said certificate may be used by the professional bondsperson for presentation to district justices of this county indicating his/her authority to do business in this county.
- (2) When a professional bondsperson desires to write bail before a district justice, he/she shall provide to the district justice a copy of the certification described in paragraph (3)(a) above, and shall further provide an affidavit setting forth the amount of bail offered and accepted for which he/she is responsible. Further, the statements shall contain the amount or premium the bondsperson is charging for the bond about to be written. Neither the clerk nor any district justice shall accept bail from any professional bondsperson if the fee to be charged exceeds the amount set forth in the Judicial Code, Title 42 Pa.C.S. Section 5748.
- (3) Any district justice accepting bail from a professional bondsperson must forward a copy of the bail to the clerk of courts together with the bondsperson's sworn affidavit. If the matter is held for court, the copy of bail and the bondsperson's statement shall become a part of the record. If the matter is disposed of at the district justice level, a certificate of disposal shall be sent by the district justice to the clerk of courts.
- (4) No security shall be accepted from any professional bondsperson at any time when the total amount of the bond then written on the security designated, or when added to the bond about to be written will exceed the cash or market value of the security to be posted.
- (5) Whenever any bail written by a professional bondsperson has been forfeited, the professional bondsperson shall not write any additional bail until he or she has paid the amount of the forfeiture in full. Generally, no bail shall be accepted from any professional bondsperson at any time when such bondsperson is not in full compliance with the provisions of this Rule.
- (6) When a real estate bond is posted in the office of the clerk of courts secured by real estate situated in Westmoreland County, the clerk will prepare an exemplification of the record as evidence of the same and forthwith file the exemplification of the record with the prothonotary, who will enter the same in the judgment docket. The clerk shall collect from the party posting the

bond the necessary fees for the exemplification of the record and the prothonotary's filing and satisfaction fees. When the prosecution has ended or upon order of court releasing the subject property, the clerk will release the judgment as satisfied on the prothonotary's docket.

- (7) In the event that bail is set at \$3,000 or lower, the issuing authority may, at any time prior to the preliminary hearing, accept a real estate bond by the presentation of the deed and the previous year's tax receipts in lieu of the requirements of subsection (6). The provisions of subsection (6) must, however, be met by the time of the preliminary hearing in order for the real property to continue to operate as security.

Adopted December 16, 1993, effective April 1, 1994; Section (d)(7) adopted December 16, 1995, effective January 15, 1996. Revised and renumbered from WC4006 May 10, 2001, effective July 2, 2001.

Note: Rule WC536 was rescinded effective July 17, 2006.

#### **RULE WC541 WAIVER OF PRELIMINARY HEARING**

The district justice may accept a Waiver of the Preliminary Hearing in accordance with Pa.R.Crim.P. 541. The district justice will schedule the court arraignment in accordance with Westmoreland County Rule of Criminal Procedure WC542(b) and inform the defendant of the time and place of arraignment.

Adopted December 16, 1993, effective April 1, 1994. Revised and renumbered from WC140A May 10, 2001, effective July 2, 2001.

#### **RULE WC542 PRELIMINARY HEARINGS**

- (a) Audio Tapes of Testimony from Preliminary Hearings
- (1) The magisterial district judge shall record testimony at preliminary hearings when requested by the district attorney or defendant's counsel.
  - (2) The magisterial district judge shall forward the recording to the clerk of courts with the docket transcript.
  - (3) The district attorney or defendant's counsel may obtain a copy of the recording from the court administrator by applying in writing within thirty days of the defendant's formal arraignment.
  - (4) If no request for a duplicate of the recording is received within 180 days of the preliminary hearing, the clerk of courts will destroy the recording pursuant to administrative procedure.
- (b) Scheduling Court Arraignment
- (1) The court administrator shall assign and promulgate arraignment dates, judges and courtrooms. The magisterial district judge shall set as the date for court arraignment the next scheduled court arraignment date which falls no sooner than the eighth Friday following the preliminary hearing or

waiver of the same. Arraignment shall be scheduled for 8:30 a.m. If the preliminary hearing or waiver occurs on a Friday, that Friday shall be counted as the first Friday.

- (2) The magisterial district judge shall:
- A. advise the defendant and counsel of the time, date, and place of arraignment, and that failure to appear at arraignment may result in the defendant's arrest and forfeiture of bond;
  - B. complete a court arraignment form;
  - C. require the defendant to sign the court arraignment form indicating that the defendant is aware of the time and place of arraignment and the obligation to appear; and
  - D. provide the defendant with a copy of the court arraignment form, retain a copy; and forward the original with the official record to the clerk of courts as required by Pa.R.Crim.P. 547.

Rescinded July 30, 2006; New Rule WC542 adopted July 30, 2006, effective September 18, 2006.

**RULE WC546 DISMISSAL UPON SATISFACTION OR AGREEMENT**

The district justice may approve the dismissal of an applicable misdemeanor upon satisfaction or proof of agreement between the parties in accordance with Pa.R.Crim.P. 546. The district justice must collect the costs of prosecution prior to dismissing the case.

Comment: A satisfaction or agreement is a resolution of the criminal case between the parties. An agreement to dismiss under this rule must be voluntary, and it serves as a notice to the court that the parties no longer seek adjudication by the court. As such, the court no longer has a duty to the parties, and the court will not be involved in the collection of any restitution, nor will the case be continued while the restitution is being collected. Should the defendant fail to pay restitution as agreed under this rule, the victim's recourse is to refile the charges.

Adopted December 16, 1993, effective April 1, 1994. Revised and renumbered from WC145 May 10, 2001, effective July 2, 2001.

**RULE WC551 WITHDRAWAL OF PROSECUTION**

The affiant may withdraw prosecution of pending court cases before a district justice only after setting forth the reasons, together with a name of the authorizing district attorney, in writing on a form approved by the court.

Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC151 May 10, 2001, effective July 2, 2001.

**RULE WC568 BENCH WARRANTS**

- (a) The person executing a bench warrant shall deliver the subject of the warrant to the warden of the Westmoreland County Detention Center. The warden shall, at the

earliest possible time, notify the court administrator that the subject of the warrant is in custody.

- (b) If the subject of the warrant voluntarily surrenders, the court administrator must be informed by the agency to which the subject has surrendered.
- (c) Upon receiving notice that a bench warrant has been executed or that the subject has surrendered, the court administrator will immediately notify the issuing judge, district attorney, and any counsel of record that the subject is in custody. In the event the issuing judge is unavailable, notice shall be given to a judge of this court assigned criminal cases who is available. After consultation with the judge, the court administrator shall schedule a hearing to be held as soon as possible. The court administrator shall give an oral notice of the hearing, and shall maintain a record of that notice.

Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC330 May 10, 2001, effective July 2, 2001.

**RULE WC569                    TRANSPORT ORDERS**

- (a) Whenever an inmate of the Westmoreland County Detention Center is required to appear before this court, the sheriff of Westmoreland County may, upon the request of any judge of this court or the district attorney, transport the defendant between the detention center and the courthouse without the need of a written order of court.
- (b) The warden must receive approval from the court administrator prior to releasing a prisoner to another jurisdiction. Once such approval is received, the warden may release the prisoner into the custody of the other jurisdiction based upon an appropriate court order or release.

Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC331 May 10, 2001, effective July 2, 2001.

**RULE WC570                    PRETRIAL CONFERENCE**

- (a) The court administrator will schedule one Pretrial Conference for each case prior to that case being scheduled for trial. The court administrator will serve Notices and copies of the Pretrial Conference Order pursuant to Pa. R. Crim. P. 114(B) on the defendant, defendant's attorney, and the assigned attorney for the commonwealth.
- (b) The parties will complete the following at least five (5) working days prior to the scheduled Pretrial Conference:
  - (1) Filing and service of any Motion for Relief pursuant to Pa. R. Crim. P. 572(C) regarding a request for a Bill of Particulars.
  - (2) Completing Pretrial Discovery pursuant to Pa. R. Crim. P. 573 including the filing and service of any Motion for Pretrial Discovery.

- (3) Filing and service of Notices of Alibi Defense or of Insanity or Mental Infirmity Defense and Disclosure of Reciprocal Witnesses as required by Pa. R. Crim. P. 573(C).
  - (4) Filing and service of any Omnibus Pretrial Motion pursuant to Pa. R. Crim. P. 578.
  - (5) Tendering by the commonwealth of any plea offer.
  - (6) Filing and service of any Motion for Continuing the Pretrial Conference.
- (c) The following will occur at the Pretrial Conference:
- (1) The parties will declare whether the commonwealth's plea offer has been accepted, whether the parties agree to the defendant entering the ARD or other pre-adjudication program, or whether the case will proceed to trial.
  - (2) The court will take pleas of "guilty", enter the defendant into the ARD or other pre-adjudication program, and decide whether to order nolle pros of any or all charges.
  - (3) The court will decide or Order argument on outstanding motions.
  - (4) The court will Order the court administrator to place the case on the trial list.
- (d) The court may order sanctions for failure to comply with this Rule.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

PRETRIAL CONFERENCE ORDER

It is HEREBY ORDERED that the Defendant, Defendant's Counsel, and the Attorney for the Commonwealth assigned to the case referenced in the enclosed Notice, report for a Pretrial Conference as instructed in the enclosed Notice, and that all parties will be prepared for the Pretrial Conference as required by Westmoreland County Rule of Criminal Procedure WC570.

Rule WC570 requires the following at least five (5) working days prior to the scheduled Pretrial Conference:

- 1. Filing and service of any Motion for Relief pursuant to Pa. R. Crim. P. 572(C) regarding a request for a Bill of Particulars.
- 2. Completing Pretrial Discovery pursuant to Pa. R. Crim. P. 573 including the filing and service of any Motion for Pretrial Discovery.
- 3. Filing and service of Notices of Alibi Defense or of Insanity or Mental Infirmity Defense and Disclosure of Reciprocal Witnesses as required by Pa. R. Crim. P. 573(C).
- 4. Filing and service of any Omnibus Pretrial Motion pursuant to Pa. R. Crim. P. 578.
- 5. Tendering by the commonwealth of any plea offer.
- 6. Filing and service of any Motion for Continuing the Pretrial Conference.

Pursuant to Rule WC570, the following will occur at the Pretrial Conference:

1. The parties will declare whether the commonwealth's plea offer has been accepted, whether the parties agree to the defendant entering the ARD or other pre-adjudication program, or whether the case will proceed to trial.
2. The court will take pleas of "guilty", enter the defendant into the ARD or other pre-adjudication program, and decide whether to order nolle pros of any or all charges.
3. The court will decide or Order argument on outstanding motions.
4. The court will Order the court administrator to place the case on the trial list.

The court may impose sanctions for failure to comply with this Order.

BY THE COURT:

\_\_\_\_\_  
John E. Blahovec J.

\_\_\_\_\_  
Richard E. McCormick, Jr. J.

\_\_\_\_\_  
Debra A. Pezze J.

\_\_\_\_\_  
Rita D. Hathaway J.

Adopted December 8, 2005, effective March 1, 2006.

**RULE WC571            ARRAIGNMENT**

- (a) Any incarcerated defendant who is to be arraigned may be arraigned via certified mail. The defendant shall receive and sign for a copy of the information and a notice regarding the time period within which to commence discovery and file and serve pretrial motions.
- (b) Within three days (excluding the day of receipt) of receiving the official papers from the district justice, the clerk of courts shall send a copy of the official papers, including the court arraignment form, to the district attorney.
- (c) The clerk of courts shall provide information concerning new cases to the court administrator and to the district attorney as the cases are received. The form of the information forwarded shall be as required and agreed to between the appropriate offices.
- (d) Arraignments shall be held each Monday, or an alternative work day if that Monday is a court holiday, at 8:30 a.m. in the court room of the judge assigned by the court administrator. The district attorney and public defender shall assure that attorneys attend each scheduled arraignment.
- (e) At arraignment the judge shall advise the defendant of:
  1. The right to counsel and that free counsel will be provided if the defendant is indigent.
  2. The defendant's right of discovery, obligations of disclosure, and time limits under Pa.R.Crim.P. 573.

3. The defendant's right to file an omnibus pretrial motion under Pa.R.Crim.P. 578, and the time limit for its filing.
- (f) The judge shall ascertain from the defendant:
1. Whether the defendant is represented by counsel; and if not, what the defendant's intentions are concerning representation.
  2. The defendant's address.
  3. Whether the defendant intends to plead guilty or not guilty, or if the defendant has been notified by the district attorney that the defendant is a candidate for Accelerated Rehabilitative Disposition, and whether or not the defendant wishes to enter the ARD Program.
  4. If the defendant pleads not guilty, whether the defendant wishes to have a trial by jury.
- (g) At arraignment the district attorney shall provide the defendant with a copy of the information and, where possible, discovery material mandated under Pa.R.Crim.P. 573(B).
- (h) An attorney who files a Waiver of Arraignment on behalf of a defendant enters an appearance by doing so.

Adopted December 16, 1993, effective April 1, 1994; Section (a) revised February 22, 1994, effective April 18, 1994; Sections (d) and (h) revised June 30, 1995, effective August 21, 1995. Revised and renumbered from WC303 May 10, 2001, effective July 2, 2001.

**RULE WC576 FILING AND SERVICE BY PARTIES**

- (A) The Clerk of Courts shall immediately time stamp all written motions, notices, or documents presented for filing, and shall docket and place in the criminal case file all such papers within two working days of filing.
- (B) Pursuant to Pa.R.Crim.P. 576(B)(3)(d) any document required to be served upon the court administrator may be served by facsimile transmission.

Rescinded September 8, 2004; New Rule WC576 adopted September 8, 2004, effective November 1, 2004.

**RULE WC579 TIME FOR OMNIBUS PRETRIAL MOTION AND SERVICE**

The 30 day period shall be calculated from the date of receipt of the information.

Adopted December 16, 1993, effective April 1, 1994. Renumbered from WC307 May 10, 2001, effective July 2, 2001.

Note: Rule WC600 was rescinded effective April 19, 2004.

**RULE WC601 PRESENCE OF JUDGE**

- (a) The court administrator will assign homicide and other specially designated cases to a judge who will handle all pretrial, trial, and post adjudication matters. For all other court cases the court administrator will assign a pretrial judge to handle all pretrial matters.
- (b) During the trial term, either the calendar control judge or the court administrator assigns the trial judge for all cases not specifically assigned pursuant to subsection (a).
- (c) The court administrator assigns judges for summary trials as cases and judges become available.

Adopted May 10, 2001, effective July 2, 2001.

Note: Rule WC1100 was repealed effective May 10, 2001.

**RULE WC717                    SUBSTANCE ABUSE EDUCATION AND DEMAND REDUCTION FUND.**

- (a) Pursuant to 18 Pa. C.S.A. Section 7508.1, which requires the collection of costs for the Substance Abuse Education and Demand Reduction Fund (SAEDRF), the Westmoreland County Clerk of Courts shall assess and collect such costs, and shall remit such costs to the Westmoreland County Treasurer;
- (b) The Westmoreland County Clerk of Courts shall remit the portion required by law to the Substance Abuse Education and Demand Reduction Fund established under Section 7508.1, and shall retain the Westmoreland County portion of the costs as a separate revenue line item, designated the “Drug Education Fee” in accordance with mandates of Pennsylvania law;
- (c) Disbursements from the “Drug Education Fee” line item shall be made available for use in substance abuse treatment or prevention programs, and shall be made available only at the direction of the President Judge. Any request for such disbursements shall be made to the Criminal Justice Advisory Board, which may then make a recommendation to the President Judge. Requests for disbursement shall be submitted in the form of a proposed Order for disbursement, setting forth the purpose of the request and the proposed use of the funds.

Adopted May 6, 2015, effective July 6, 2015.

## **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.

**WESTMORELAND COUNTY RULES OF JUDICIAL ADMINISTRATION**

**TABLE OF RULES**

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Rule WJ103      Official Publisher of Local Rules.....  
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WHJ103 rescinded September 23 , 2015; New Rule WJ103  
adopted September 23, 2105, effective November 9 , 2015.

Rule WJ110      Oaths and Acknowledgments.....  
Rescinded September 18, 2012; New Rule WJ110 adopted  
September 18, 2012, effective November 12, 2012.

**UNIFORM RULES GOVERNING COURT REPORTING AND TRANSCRIPTS**

Rule WJ507      Raw Notes. Transcripts. Retention of Raw Notes and Transcripts.....  
Repealed May 26, 2009; New Rule WJ507 adopted May 26, 2009,  
effective July 13, 2009.

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Adopted July 12, 1999, effective September 6, 1999.

Rule WJ510      Public Access of Official Case Records in the Magisterial District  
Courts .....  
Adopted August 18, 2010, effective October 4, 2010.

Rule WJ5000.4      Employment and Duties of Reporters .....  
Adopted April 17, 2001, effective June 4, 2001.

Rule WJ5000.5      Requests and Orders for Transcripts.....  
Adopted December 16, 1993, effective April 1, 1994.

Rule WJ5000.7      Fees for Transcripts .....  
Adopted December 16, 1993, effective April 1, 1994.

Rule WJ5000.13      Ownership of Notes.....  
Rescinded March 5, 1999; New Rule WJ5000.13 adopted March 5,  
1999, effective April 19, 1999. Section (c) adopted April 17, 2001,  
effective June 4, 2001.

Rule WJ6000.1      Court Appointed Counsel.....  
Adopted May 22, 2014, effective August 23, 2014.

**GENERAL PROVISIONS**

**RULE WJ103                    OFFICIAL PUBLISHER OF LOCAL RULES**

The Westmoreland County Court Administrator is the official publisher of the Westmoreland County Rules of Court.

Adopted December 16, 1993, effective April 1, 1994. Rule WJ103 rescinded September 23, 2015; new rule WJ103 adopted September 23, 2015, effective November 9 , 2015.

**RULE WJ110                    OATHS AND ACKNOWLEDGMENTS**

All court assistants, whether full-time, part-time or temporary, and all court reporters are authorized to administer oaths and affirmations and to take acknowledgments pursuant to 42 Pa.C.S.A. § 327.

Rescinded September 18, 2012; new Rule WJ110 adopted September 18, 2012, effective November 12, 2012.

Note: Rule WJ1901 was rescinded effective July 25, 2003.

**UNIFORM RULES GOVERNING COURT REPORTING AND TRANSCRIPTS**

**RULE WJ507                    RAW NOTES. TRANSCRIPTS. RETENTION OF RAW NOTES AND TRANSCRIPTS.**

A. Definition

**Raw Notes** include those produced on paper tapes or other media in the original state in which they were taken at the time of testimony.

B. Raw Notes of Testimony

1. In any case in which no transcript has been prepared, the raw notes shall be retained for seven years from the date of testimony.
2. Any party may petition the court for an order directing the retention of particular raw notes for a period of time beyond the seven years required in paragraph 1.

C. Automatic Transcripts

Court reporters will automatically transcribe raw notes and file the original transcript of all Termination of Parental Rights and Adoption proceedings.

D. Transcripts

1. The original of all transcripts will be filed with the appropriate record keeper. With the exception of paragraphs 2 and 3 of this section, transcripts filed with the official record keeper are subject to the retention periods for case files set forth in the *County Records Manual*.
2. Transcripts filed in juvenile matters may be destroyed when the subject reaches the age of 25, or 10 years after the last action in the case, whichever is later.
3. Transcripts for Divorce or Annulment cases may be destroyed 5 years after the Final Decree in Divorce or Annulment is entered.

E. Record Retention Disposal Log

Disposal of notes shall be accomplished as provided in Section 2.3 of the *Supreme Court's Record Retention and Disposition Schedule*. When completing Disposal Log Forms, the notes need not be listed on the Log by caption and case number, but may be listed only by date of hearing.

Comment: Pursuant to 23 Pa.C.S.A. 29905(a), raw notes of testimony of Adoption and Termination of Parental Rights proceedings must be filed of record. Paragraph C requires that all such proceedings be transcribed and that the transcripts be filed. This requirement exceeds the statutory requirement.

Repealed May 26, 2009; New Rule WJ507 adopted May 26, 2009, effective July 13, 2009.

**RULE WJ507A RETENTION OF COURT EXHIBITS**

**CIVIL CASES**

- A. Subject to the provisions of subsection B, the Prothonotary shall have the authority to purge, dispose or destroy all civil court exhibits after a case has been finalized. In determining whether a case has been finalized, the Prothonotary shall consider:
  1. whether the appeal period has run without an appeal being perfected,
  2. whether the appellate court has ruled on the appeal and no further appeal has been perfected, and
  3. whether the case is settled, discontinued, satisfied, and ended on the record.
- B. Prior to disposing of a civil court exhibit, the Prothonotary shall notify by first class mail any self represented party and all counsel of record of the following:
  1. the exhibit will be disposed of if no claim is made within 30 days and
  2. the exhibit will be returned to the party claiming the exhibit at the expiration of the 30 days unless another party files an objection.

Adopted July 12, 1999, effective September 6, 1999.

**RULE WJ510 PUBLIC ACCESS OF OFFICIAL CASE RECORDS IN THE MAGISTERIAL DISTRICT COURTS**

- A. The following are the fees to be charged for accessing and copying case records in the Westmoreland County magisterial district courts:
  - 1. \$0.25 per page copied (No fee shall be charged to a party for copies of their own case records.)
  - 2. \$8.00 for each completed quarter (1/4) hour associated with the preparation, copying and re-filing of requested court records (This fee is only for bulk requests and shall not be charged if service time is less than 15 minutes).
- B. Fees paid for services are non-refundable.
- C. Pre-payment of estimated costs for services may be required at the discretion of the magisterial district court judge.

Adopted August 18, 2010, effective October 4, 2010.

**RULE WJ5000.4 EMPLOYMENT AND DUTIES OF REPORTERS**

A court reporter may not take depositions for private parties during regularly scheduled work hours unless the reporter is on approved vacation, personal day, or leave of absence without pay.

Adopted April 17, 2001, effective June 4, 2001.

**RULE WJ5000.5 REQUESTS AND ORDERS FOR TRANSCRIPTS**

No transcript shall be typed unless a request is made in writing and copies delivered to the appropriate offices as listed in Pa.R.J.P. 5000.5. The court reporter shall deliver a copy of the order, when the court orders a transcript for its sole use, to the court administrator.

Adopted December 16, 1993, effective April 1, 1994.

**RULE WJ5000.7 FEES FOR TRANSCRIPTS**

- (a)(1) All copies of court transcripts will be made at the county's expense. The county will pay no fee for copies.
- (a)(2) The county will not pay in excess of \$2.00 per original typescript.
- (b)(1) If the court orders a transcript for its sole use (this means that none of the parties needs to use the transcript), the county shall pay \$1.25 per page.
- (b)(2) In criminal cases wherein the defendant is indigent and is represented by either a public defender or court-appointed counsel or is entitled to proceed in forma pauperis, the county shall pay a total of \$1.85 per page. The original is the record

copy. One copy will be made for the district attorney and one for each defense counsel.

- (b)(3) In criminal cases wherein the defendant is represented by private counsel, the party required to file a copy or the party who uses the transcript to further the appeal shall be obliged to order the transcript from the reporter and pay the reporter a fee. The fee will cover the cost of the original which will be filed with the clerk of courts by the reporter upon receipt of payment in full. The ordering party may also ask for one copy which will be provided at no additional cost. Such copy may be duplicated by the ordering party for the sole purposes of either filing with the appellate court or private use by the party. Any other private parties using the transcript shall pay a fee representing their proportionate share of the filed transcript and their personal copy. The reporter shall inform the parties of their proportionate costs. All copies used by the court, the district attorney, the public defender, or courtappointed counsel shall be at no cost to the county.
- (b)(4) In all criminal cases in which a party is represented by private counsel and the appeal is brought by the district attorney, the county will pay \$1.55 per page. The private attorney who asks for a copy will be required to pay the reporter a reasonable fee for the copy.
- (b)(5) In all civil cases, the party required to file a copy or the party who uses the transcript to further the appeal shall be obliged to order the transcript from the reporter and pay the reporter a fee. The fee will cover the cost of the original which will be filed by the reporter upon receipt of payment in full. The ordering party may also ask for one copy which will be provided at no additional cost. Such copy may be duplicated by the ordering party for the sole purposes of either filing with the appellate court or private use by the party. Any other parties using the transcript shall pay a fee representing their proportionate share of the filed transcript and their personal copy. The reporter shall inform the parties of their proportionate costs.

NOTE: Typing of the transcript and payment under the provisions of this rule are not automatic. The transcript must be ordered pursuant to Westmoreland County Rule of Judicial Administration WJ5000.5.

Adopted December 16, 1993, effective April 1, 1994.

**RULE WJ5000.13 OWNERSHIP OF NOTES**

- (a) In all cases, the court shall have the original transcript available for its own use. Except as otherwise provided by law, no person shall reproduce the original or a copy of the transcript by any method other than as provided in Westmoreland County Rule of Judicial Administration WJ5000.7. Any person making such an unauthorized reproduction is liable to the reporter for the cost.
- (b) The prothonotary, register of wills, and clerk of courts shall not permit the original transcript or a copy thereof to leave its custody except either for use by a trial or appellate court, by order of court, or as otherwise provided by law.

- (c) The court reporter that takes the notes of a particular proceeding is responsible for transcribing those notes upon Order of Court or request and payment of an appropriate fee. The obligation of the court reporter to transcribe proceedings remains, subject to payment of transcription fees, after the employment relationship with the Court of Common Pleas of Westmoreland County has ended.

Rescinded March 5, 1999: New Rule WJ5000.13 adopted March 5, 1999, effective April 19, 1999. Section (c) adopted April 17, 2001, effective June 4, 2001.

**RULE WJ6000.1 COURT APPOINTED COUNSEL**

- (a) All attorneys wishing to be appointed by the Court must annually certify to the Court Administrator that the attorney has adequate liability insurance coverage.
- (b) Attorneys representing parents or serving as guardian ad litem (GAL) in juvenile and orphans' court for dependency/termination proceedings must, annually receive three (3) hours of CLE credits devoted to dependency/termination proceedings. All attorneys wishing to be added to the court-appointed list to represent parents or serve as a GAL in juvenile and orphans' court for dependency/termination proceedings must first attend a 6 hour training program presented by the Court and County Solicitors Office. Proof of these CLE credits must be submitted to the Court Administrator.
- (c) Payment of Fees
  - (1) Criminal Appointments
    - a. Pre-Adjudication and Adjudication - Counsel must present the Petition for Attorney's Fees for pre-adjudication and adjudication **after completion of the preliminary hearing and, unless otherwise ordered, monthly thereafter for all capital cases and quarterly thereafter for all other cases until representation is concluded.** The attorney will indicate the case number, criminal charges and charge disposition on the petition. **Invoices submitted more than 120 days after case adjudication will not be paid.**
    - b. Direct Appeal and PCRA - Invoices for work done in furtherance of direct appeal or for post-conviction review (PCRA) must be submitted within 120 days of the work completed. **Invoices submitted for work done in furtherance of appeal or for assignment of a PCRA beyond the 120 days will not be paid.**
    - c. Conflict Counsel - Invoices shall be submitted monthly pursuant to contract.
  - (2) Family Court Appointments - Counsel or GAL in any family court matter must present a Petition for Attorney's Fees **within 120 days after each hearing, review hearing, adjudication, or disposition.** Please indicate the file number and who (i.e., mother, grandmother, guardian ad litem for the children) you represent. **Invoices submitted beyond the 120 day deadline will not be paid.**

(d) Rate of Compensation

The hourly rate of compensation shall be fixed from time to time by Order of Court. Compensation for Conflict Counsel shall be established by contract.

(e) Procedures

The Court Administrator of Westmoreland County may establish procedures regarding the form of Petitions, copies, subpoenas, postage and telephone, professional services, mileage and travel, witness fees, and other costs and services.

Adopted May 22, 2014, effective August 23, 2014.

**WESTMORELAND COUNTY DISTRICT JUSTICE RULES**

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**APPELLATE PROCEEDINGS WITH RESPECT TO JUDGMENTS AND OTHER DECISIONS  
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Rule WD1016	Statement of Objection.....
	Adopted April 11, 1996, effective June 3, 1996.

**APPELLATE PROCEEDINGS WITH RESPECT TO JUDGMENTS AND OTHER DECISIONS  
OF DISTRICT JUSTICES IN CIVIL MATTERS**

**RULE WD1016      STATEMENT OF OBJECTION**

The petitioner filing a Statement of Objection shall, within ten (10) days of the filing of the statement file a signed order setting a date and time of hearing. Failure to file the signed order may, upon motion of the opposing party, result in dismissal of the action.

Adopted April 11, 1996, effective June 3, 1996.

Note: Rule WD1008 was repealed effective June 3, 1996.

**WESTMORELAND COUNTY RULES OF DISCIPLINARY ENFORCEMENT**

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	Adopted November 21, 2002, effective January 5, 2003.

**RULE WDE301            PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE  
INCAPACITATED OR SEVERELY MENTALLY DISABLED**

- (a) Whenever the respondent in a mental health matter is an attorney, the Westmoreland County Mental Health/Mental Retardation Department or the Westmoreland County Mental Health Hearing Officer shall immediately notify the Court.
- (b) The Court shall, upon declaring an attorney incapacitated, or ordering involuntary treatment of an attorney on the grounds that the attorney is severely mentally disabled, or denying a petition for review of a certification by a mental health review officer subjecting an attorney to involuntary treatment, immediately deliver the Order to the Westmoreland County Prothonotary.
- (c) The Order shall direct the Prothonotary to mail within 24 hours by certified mail, return receipt requested, a certified copy of the Order to Disciplinary Counsel.
- (d) The person delivering such Order to the Prothonotary shall indicate the nature of the Order and the need for the Prothonotary to take immediate action.
- (e) The Westmoreland County Prothonotary shall, pursuant to Pennsylvania Rule of Disciplinary Enforcement 301(a), mail by certified mail, a certified copy of the Order within 24 hours of any judicial determination to:

Counsel-in-Charge, District IV  
Office of Disciplinary Counsel  
Suite 400, Union Trust Building  
501 Grant Street  
Pittsburgh, Pa. 15219

- (f) The Prothonotary shall file the return receipt upon receiving it from the Post Office as proof of transmission.

Note: This Rule is promulgated pursuant to Rule 301(a), Pennsylvania Rule of Disciplinary Enforcement.

Adopted November 21, 2002, effective January 5, 2003

**WESTMORELAND COUNTY RULES OF JUVENILE PROCEDURE**

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	Adopted December 13, 2006, effective February 1, 2007.
	Re-adopted April 21, 2010, effective April 21, 2010.

Note: Rule WJUV1 was rescinded effective October 1, 2005.

Note: Rule WJUV167 was replaced with Rule WJUV1167 effective February 1, 2007.

**RULE WJUV1167      FILINGS AND SERVICE OF COURT ORDERS AND NOTICES**

The Court of Common Pleas of Westmoreland County shall serve all court notices and documents through either the Westmoreland County Children's Bureau or the Westmoreland County Juvenile Probation Office.

Adopted December 13, 2006, effective February 1, 2007. Re-adopted April 21, 2010, effective April 21, 2010.

Note: Rule WJUV1330 was rescinded effective August 29, 2007.