

**ERIE COUNTY
COURT OF COMMON PLEAS
6TH Judicial District
Erie, Pennsylvania**

LOCAL ORPHANS' COURT RULES

Amended Effective

February 27, 2012

ORPHANS' COURT RULES COMMITTEE

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COMMON PLEAS COURT
ERIE CO.
JAN 12 PM 2:21
CLERK OF RECORDS
PROTHONOTARY

IN THE MATTER OF
THE REVISION AND
RESTATEMENT OF THE
LOCAL ORPHANS' COURT
RULES FOR ERIE COUNTY

: IN THE COURT OF COMMON
: PLEAS OF ERIE COUNTY
: PENNSYLVANIA
: CIVIL DIVISION
: NO. 90001-12

ORDER

AND NOW, this 6^R day of January, 2012, amended Rule(s) 12.0.1(b)(2) of the Orphans' Court Rules for Erie County, Pennsylvania are as follows and they shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

BY THE COURT



ERNEST J. DiSANTIS, JR.
PRESIDENT JUDGE

CERTIFIED COPY



Prothonotary

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RULE 1

JUDGES - LOCAL RULES

1.2.1 The Business of the Court

(a) Motion Court. Unless otherwise ordered by the Court, Motion Court will be held every Monday through Thursday at 9:00 a.m.

(b) Audit List. Accounts shall be audited by the Court anytime after the expiration of the deadline for the filing of objections.

(c) Elimination of Formal Audit Court. There shall be no formal Audit Court hearing.

1.2.2 Argument.

Cases requiring argument are heard at a time fixed by the Court.

1.2.3 Attorneys.

(a) Attorney as Surety. An attorney shall act as surety only by special Order.

(b) Notice to Counsel. Notice by or to attorneys shall be in writing, given to the attorney of record or to an employee of his office, and shall be considered notice to the party represented unless personal notice to the party is required.

(c) Removal of Records. No records shall be removed from the office of the Clerk without a written Order of Court. The Clerk shall report to the Court any failure to comply with the Order.

(d) Appearance. Any attorney representing a party in any proceeding in the Orphans' Court Division shall enter a written appearance with the clerk of the Orphans' Court which shall state the attorney's Pennsylvania Supreme Court Identification Number and an address within the Commonwealth at which papers may be served. Written notice of entry of appearance shall be given forthwith to all parties.

1.2.4 Sureties. Individual - Corporate

(a) Individual Sureties. Individuals proposed as sureties on bonds of fiduciaries shall file affidavits on the printed forms supplied by the Clerk. The affidavits and bond shall be filed for approval.

(b) Bond Without Surety. The Court may permit a party in interest to execute an individual bond, without surety upon such conditions as the Court requires.

(c) Corporate Sureties. Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in the Orphans' Court; provided, that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, is filed of record.

(d) Duty of fiduciary. It is the duty of the fiduciary to determine that its surety remains responsible and that any bond remains continuously in effect.

1.2.5 Certificates of Appointments. Fiduciaries.

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

1.2.6 Individual Fiduciaries. Assets and Investments.

(a) Segregation and Designation of Assets. Assets subject to the jurisdiction of the Court and held by individual fiduciaries shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such unless they are left in the name of the decedent, the incapacitated person, or the minor.

(b) Small estates. Where the cash assets of an estate are \$1,000.00, or less, the fiduciary may deposit such cash in the attorney's trustee account.

(c) Deposit of Uninvested Funds. All funds held uninvested shall be deposited in financial institutions, the deposit of which are insured by a Federal governmental insurance agency, in such manner as to guarantee that all such funds are fully insured, unless otherwise authorized by the Court.

1.2.7 Corporate Fiduciaries. Approval. Security.

(a) In General. Corporations having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court; provided that a current certificate evidencing the approval of the State Banking Department, or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers, is on file with the Clerk.

(b) Period of Approval. The approval granted by the Court under subparagraph (a) of this Rule shall be for a period of one year and thereafter annually, subject; however, to compliance by the corporation with these Rules and with such other rules and regulations governing approval of continuance as the Court will, from time to time, promulgate.

(c) Security. A bond will not be required of an approved corporate fiduciary except when required by statute or for special cause shown.

1.2.8 Release of Fiduciary and Surety.

No fiduciary, bonding company or corporation that files its own bond, or individuals who become sureties on bonds, will be released from their liabilities on the bond until all of the requirements relative to the administration of the estate have been fulfilled. Any surety may be substituted by special Order of Court, but the old surety shall only be released after filing and confirmation of an account, unless excused from doing so by Order of Court.

1.2.9 Trusts Inter Vivos.

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

1.2.10 Legal Periodical.

The *Erie County Legal Journal* is the legal periodical for the publication of legal notices in Erie County.

1.2.11 Return Days.

Return days shall be on such day as may be fixed by Order of Court unless otherwise provided by statute or Rule of the Supreme Court.

RULE 2

CONSTRUCTION AND APPLICATION OF RULES

2.3.1 Definitions.

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

- (a) "Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Court House is closed.
- (b) "Common Pleas" means the Court of Common Pleas of Erie County.
- (c) "Exceptions" shall mean written objections to a ruling of the Court.
- (d) "Local Rule" shall mean the Erie County Orphans' Court Rules.
- (e) "Objections" shall mean written objections to actions of a fiduciary.
- (f) "PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code as found in 20 Pa. C.S.A. § 101, et seq., as shall be amended from time to time.
- (g) "State Rule" shall mean the Pennsylvania Supreme Court Orphans' Court Rules.

RULE 3

PLEADINGS AND PRACTICE

3.2.1 Pleadings.

The Pleadings in matters before the Orphans' Court are limited to a petition, (including a petition for a citation or for declaratory relief), an answer (which may include new matter), a reply, preliminary objections and an answer to preliminary objections.

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

(b) Reply. A reply shall be required when New Matter is set forth in the answer.

(c) Preliminary Objections.

(1) Preliminary objections are available to any party, but shall be limited to questions of:

- (A) law;
- (B) form; or
- (C) jurisdiction.

(2) An answer to preliminary objections is limited to the averments of fact concerning jurisdiction set forth in the preliminary objections.

3.2.2 Disposition of Pleadings.

(a) Failure to Answer. If the respondent fails to file a timely answer, all averments of fact within the petition may be deemed by the Court to have been admitted.

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

(c) Failure to File an Answer to Preliminary Objections. If the petitioner fails to file an answer to preliminary objections raising questions of jurisdiction, the averments of fact set forth in the preliminary objections may be deemed admitted and the case will be at issue on the preliminary objections.

3.4.1 Form. Additional Requirements.

(a) Typing. Endorsements. Every pleading shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number of counsel and, where practicable, typewritten and double-spaced or printed.

(b) Notice to Plead. Every pleading to which a response is required shall have endorsed thereon, or included therein as the first page thereof, in a conspicuous place, a notice to defend and notice to plead addressed specifically to each party from whom a response is required. The form as required by RCP 1018.1 and RCP 1361 (as said Rules may be in force or hereafter amended) shall be used.

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

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

(e) Consents. The petition shall recite that all necessary consents are attached or shall set forth the names of the persons who do not consent. In all cases where a consent is not attached, in order to obtain personal jurisdiction over a non-consenting person, a citation shall be issued and served upon the person(s) who do not consent. See Pa. State Orphans Court Rule 3.5.

(f) Paper Size. No paper or other document may be filed in the Register of Wills or Clerk of Orphans' Court Division other than paper 8½" x 11" in size. The only exception to this Rule is the filing of a Will.

(g) Cover Sheet. All motions presented at motion Court shall include a completed motion Court cover sheet in the form required by the Court.

(h) Notice Requirements Prior to Presentation at Motion Court.¹ Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

- (1) Contents of Notice. The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion and Order.
- (2) Certification of Notice. The motion or petition must contain a certificate signed by counsel verifying that proper notice or citation was given under this Rule.
- (3) Length of notice required. Except where otherwise required under the Local Rules, the following notice shall be required:
 - (A) Two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office, **or**
 - (B) Five (5) full business days' notice must be given if notice is by mail.
- (4) Failure to give notice. The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause is shown to the Court.

3.5.1 Service of Copies of Pleadings.

(a) Pleadings. A copy of every pleading filed in a case shall be promptly served upon counsel of record for all parties in interest; or, in the absence of counsel, upon the parties themselves.

(b) Briefs. All briefs shall be filed directly with the Clerk of the Court, with copies to the Judge and to all parties of record or their counsel of record.

¹ See also Rule 7 for additional notice.

3.6.1 Depositions, Discovery and Production of Documents

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court.

(a) Leave to take depositions and/or to obtain discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.

(b) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.

3.6.2 Perpetuation of Testimony

The procedure relating to perpetuation of testimony shall be governed by special Order of Court in every case.

3.7.1 Pre-trial Conference

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

- (a) The simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions or stipulations of fact and documents which will avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses; and
- (e) Such other matters as may aid in the disposition of the action.

The Court may make an Order reciting the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such Order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

RULE 5

NOTICE

5.1.1 Method of Serving Notice. Public Sale of Real Property.

Notice of the public sale of real property (containing the date, time and place of sale and any other information required by Act of Assembly) shall be given:

(a) By advertisement once a week for three successive weeks in the *Erie County Legal Journal* and at least in one newspaper of general circulation in Erie County; and

(b) (1) By handbills, one of which shall be posted at a conspicuous place on the real property to be sold, and at least three of which shall be posted in three public places in the vicinity of such real property; and

(2) By personal notice, sent via registered or certified mail, to all parties in interest, of the time and place of the proposed sale, at least ten days prior to the time set for the sale of the property.

5.1.2 Petitions for Approval or Confirmation of Public Sale.

Petitions for approval or confirmation by the Court of the public sale of real property shall be verified and shall be set forth:

(a) The notice as given as provided by this Rule; and

(b) The method of sale; and

(c) The price obtained; and

(d) The name and address of the purchaser and an averment that the purchaser was the highest bidder.

5.2.1 Method of Serving Notice. Person under Incapacity With No Fiduciary

Whenever notice is to be given to a person who is not *sui juris*, for whom there is no guardian or trustee, notice shall be given by serving it upon said person, if more than fourteen years of age, and, in all cases, upon

(a) Said person's spouse; or if no spouse, then; next of kin; and an adult with whom said person resides or by whom said person is maintained; or the superintendent or other official of the institution having custody of said person; or

(b) In such manner as the Court, by special Order, may direct.

5.2.2 Method of Serving Notice. Presumed Decedents and Unascertained Persons

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

5.4.1 Return of Notice. Additional Requirements

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

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

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

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

5.4.2 Petitions for Approval or Confirmation of Public Sale.

Petitions for approval or confirmation by the Court of the public sale of real property shall be verified and shall set forth:

- (a) The notice as given as provided by Rule 5.4.1 (a);
- (b) The price obtained; and
- (c) The name and address of the purchaser and an averment that the purchaser was the highest bidder.

5.6.1 Legatees, Devisees and Beneficiaries of Dispositive Instruments. Notice to Named Individuals

In every proceeding involving a dispositive instrument requiring the filing of a Pennsylvania Inheritance Tax Return (including, inter alia, wills and inter-vivos trusts), the Fiduciary shall within three (3) months after the probate of the Will, or within six (6) months of the happening of the event giving rise to the disposition of any interest in any property, whichever shall first occur, notify all individuals and entities (and the Attorney General, where required) named in said dispositive instrument of the probate or the happening of the event giving rise to the disposition of the interest. The notice shall be submitted by regular U.S. Mail and shall include the following:

- (a) In the case of a will²:
 - (1) The name of the decedent and date of death;
 - (2) The date that a Will has been probated and the location;
 - (3) Notification that the addressee has been named as a legatee or devisee in said will;
 - (4) The address where a copy of the will can be acquired, if desired.

² The form provided by the Register of Wills at the time of Appointment of a Personal Representative may be used to meet the requirements of this section.

- (b) In the case of a dispositive instrument other than a will:
 - (1) The name of the creator of the property interest;
 - (2) The nature of the property interest created;
 - (3) Notification that the addressee has been named as a beneficiary in said dispositive instrument and a copy of such instrument or a description of the beneficiary's interest under the terms of the instrument;
 - (4) The address where a copy of the dispositive instrument can be acquired, if desired.

5.6.2 Medical Assistance Recovery and Notice

In the event that a decedent had attained the age of fifty-five (55) years prior to his death, the Personal Representative shall, not later than the last date for service of notice required pursuant to State Rule 5.6, serve notice upon the Department of Public Welfare pursuant to 55 Pa. Code Chapter 258 "Medical Assistance Estate Recovery" in accordance with the requirements of the Code. Not later than ten days after the expiration of the period for response under the regulations, the Fiduciary shall file a Certificate of Service setting forth:

- (a) The content of the notice by a copy thereof;
- (b) The method of service;
- (c) The date of service;
- (d) A copy of any response received; or
- (e) A statement of no response.

RULE 6

ACCOUNTS AND DISTRIBUTIONS

6.1.1 Accounts. Form. Additional Requirements.

In addition to the requirements of State Rule 6.1, accounts shall meet the following requirements:

(a) Form. Except as herein provided, all accounts shall be in the form approved by the Pennsylvania Supreme Court and known as the Uniform Fiduciary Accounting Standards. Should the account fail to comply with the said accounting standards, the Clerk shall notify the Accountant to immediately comply prior to twenty (20) days before the Audit Day. The corrected account shall be given to all parties in interest. A failure to correct the account shall result in the account being stricken.

(b) Paper. Accounts shall be stated on 8 1/2" by 11" paper, fastened together securely at the top and numbered consecutively at the bottom.

(c) Use of forms provided by Register of Wills. Accounts may continue to be stated in conformity with and on forms provided by the Register of Wills.

6.1.2 Reporting Requirements for Sales and Purchases Between Estate and Accountant.

The account shall specifically describe and indicate the amount:

(a) Of the purchase price for all assets which have been purchased from the estate by the accountant, individually, as a fiduciary or in any other capacity; and

(b) Received for all assets sold to the estate which are owned by the accountant, individually, as a fiduciary or in any other capacity.

6.1.3 Execution and Verification of Account.

Every account filed with the Register or Clerk shall be signed by each accountant, unless special leave of Court is obtained, and shall be verified by at least one accountant. It must be sworn or affirmed:

(a) That the disbursements claimed have been made to the parties entitled thereto;

(b) That the account as stated is true and correct;

(c) That notice has been given to each unpaid creditor, whether or not payment is contested;

(d) In a decedent's estate, that four months have elapsed from the date of the first complete advertisement of the original grant of letters, unless the accountant has been directed by the Court to file an account prior to that time.

6.1.4 Receipts for Disbursements.

Disbursement receipts or canceled checks of one thousand dollars (\$1,000.00), or more, or reproduced copies of either, shall be presented with the account; except corporate fiduciaries in lieu thereof may file copies of their ledger sheets showing disbursements. In the case of inheritance taxes, bequests and distributive shares, all receipts or canceled checks or reproduced copies of either shall be filed with the account without regard to the amount thereof.

If counsel for the fiduciary certifies that a receipt or cancelled check executed by the distributee is not available despite good faith efforts to obtain same, a photocopy of the front of the check accompanied by evidence of payment by the bank shall be acceptable or alternative verification at the discretion of the Orphans' Court Auditor.

With respect to deposits, expenses, purchases, and sales made through an investment account with a broker, insurance company, trust company, or similar entity, a copy of the periodic statements furnished by said entity shall constitute an acceptable evidence of such transactions.

6.1.5 Small Estates.

Where an estate does not exceed in value the amount fixed by the PEF Code as a small estate, an account may be filed and confirmed in accordance with the applicable Statutory authority. Petitions for the Settlement of Small Estates must conform to the PEF Code and Local Rule 12.0.1.

6.2.2 Accounts of Guardians of the Estates of Minors.

The guardian of the estate of a minor shall submit to the Court with the audit statement and account:

- (a) A statement of the manner and date of appointment of the guardian;
- (b) A statement that notice of the audit has been given to all known, unpaid claimants; and
- (c) If a final account because the minor has attained majority, is deceased, or has been adjudged an incapacitated person, a Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa.O.C. Rules 6.9, in the manner set forth in Form OC—04 of the Pennsylvania Orphans' Court Rules.

6.3.1 Notice to Parties in Interest.

No account shall be confirmed unless the accountant has mailed or given to the attorney of record of or to every unpaid claimant who has given written notice of his claim to the accountant and every other person known to the accountant to have or claim an interest in the estate as a creditor, beneficiary, heir, or next of kin, except where a specific legatee has been paid in full, a written copy of the complete account and written notice of the filing thereof in accordance with Local Rule 7.1.2(b).

6.4.1 Filing for a Particular Audit.

Accounts to appear on a particular audit list must be filed in accordance with the audit calendar published by the Clerk's office.

6.4.2 Postponement or Adjournment and Method of Audit.

Audits may be postponed or adjourned at the discretion of the Auditing Judge. Accounts shall be audited by the Auditing Judge, who shall give written notice to the accountant or the accountant's attorney of record of:

- (a) Any objections and the hearing dates thereon;
- (b) Any conditions precedent to confirmation of the account;
- (c) Confirmation; and
- (d) Any other matters deemed appropriate by the Court.

6.4.3 Attendance at Audit not Required.

Attendance at the audit by the accountant, by the attorney of record for the accountant or any interested party shall not be required. There shall be no formal Audit Court hearing.

2008 Comment: The change to Local Rule 6.2.2 is necessitated by the 2006 addition of PA Form OC—04, which is now required under Pa.O.C.Rule 6.9. The information required under the former Local rule 6.2.2(c) and (d) will be included in PA Form OC—04. The change to Local Rule 6.3.1 reflects the broader and more exhaustive language of Pa.O.C. Rule 6.3, which requires notice to known claimants and those having an interest as creditors (whether a claim has been filed or not), and to beneficiaries, heirs, or next of kin (which are broader in terms that the term “distributee”), even though the accountant may be convinced that they have no valid interest.

6.6.1 Advertisement of Accounts, Audit Statements, and Petition for Adjudication.

The Clerk shall give notice of all accounts, audit statements, and Petitions for Adjudication filed both in the Clerk’s Office and in the Office of the Register of Wills and of the time and place of audit by advertising in the legal periodical and in one newspaper of general circulation published in Erie County in accordance with the requirements of the PEF Code Section 745, as may be amended. An account/Petition for Adjudication shall not be audited unless an audit statement or Petition for Adjudication has been filed in timely accordance with the audit calendar published by the Clerk’s office. The Clerk’s notice shall include the last day on which objections may be filed.

6.6.2 Filing.

Accounts/Petitions for Adjudication received by the Clerk or by the Register and found to violate any provision of these Rules or the State Rules will not be docketed.

6.9.1 Audit Statement and Petition for Adjudication.

(a) The Audit Statement/Petition for Adjudication shall be signed by each Accountant/Petitioner and verified by at least one of them, which Affidavit shall state that a copy of the Statement of Proposed Distribution has been mailed or given to each unpaid creditor and to each distributee or his attorney of record. The Audit Statement/Petition shall include a Statement of Proposed Distribution.

(b) The Audit Statement/Petition for Adjudication shall be filed not later than four (4) weeks prior to the date audits are scheduled by the Clerk to be presented to the Court. A copy of the Audit Statement/Petition for Adjudication shall be served on all parties in interest not later than twenty (20) days prior to the Audit date.

(c) In the event that an Accountant/Petitioner files an account/Petition for Adjudication required by these Rules and thereafter for a two (2) year period fails to file Statement of Proposed Distribution, the Court sua sponte, upon recommendation of the Orphans’ Court Auditor and/or upon motion of a party in interest, may dismiss without prejudice, and consider the account withdrawn with 10 days prior notice to the Accountant/Petitioner. The Accountant/Petitioner shall have the right to re-file an account, upon the payment of the filing fee. At the time of re-filing an account, the Accountant/Petitioner shall be required at a minimum to file a Statement of Proposed Distribution.

6.9.2 Unknown or Non-Resident Distributees. Report by Fiduciary.

Whenever it shall appear at the audit of an account that the identity or whereabouts of a distributee is unknown, or that if distribution is made, the beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property to be awarded, and the Court is requested to withhold distribution or to make a provisional award thereof to the accountant, to the Clerk of the Orphans' Court, or to the State Treasury through the Department of Revenue, or in any manner other than to the distributee or the nominee of said distributee, the fiduciary or his counsel shall submit to the Court or auditor, as the case may be, a written report outlining the investigation made and the facts upon which the request is based.

6.9.3 Contents of Report.

The report shall be submitted at the audit and shall include substantially the following:

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

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

(b) Non-Resident Distributees. If the fiduciary requests the Court to withhold distribution to a non-resident distributee, he or she shall submit a written report at the audit, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

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

6.9.4 Additional Receipts and Disbursements.

Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the Statement of Proposed Distribution or in a separate statement attached thereto.

6.10.1 Objections to Account, Audit Statement or Statement of Proposed Distribution. Form, Notice and Time.

(a) Objections to an account, audit statement or Petition for Adjudication shall be filed in timely fashion in accordance with the deadline set forth in the notice to be given by the Clerk pursuant to Rule 6.6.1.

(b) Each objection shall be specific as to description and amount.

(c) Objections shall be filed with the Clerk of the Orphans' Court.

(d) A copy of the objections shall be served promptly after filing upon the Court by mailing or delivering a copy to the Auditing Judge, the Orphans' Court Auditor, upon counsel for the accountant and counsel for all other parties who have entered appearances.

(e) The Court, for cause shown, may extend the time for filing of objections; provided that a request for extension of time by any person or entity having received notice of the Account/Petition for Adjudication and Statement of Proposed Distribution has been filed or presented prior to the date of the audit.

(f) Failure by a party or entity to whom notice of the account and statement of proposed distribution has been given in accordance with Local Rule 6.9.1 to file timely objection or to request an extension of time in which to file objections shall constitute a waiver of objections.

(g) Within twenty days of filing an objection, the objecting party or his/her attorney shall schedule a hearing thereon pursuant to Erie L.R. 304 allowing ample time for the objection to be heard. The accountant or his/her attorney may (but is not required to) schedule a hearing during the same period pursuant to the same procedure. The party scheduling the hearing shall notify all other parties and the Orphans' Court Auditor of the date and time thereof. Upon the failure of the objecting party or his/her attorney to schedule a hearing within the required time period and in the absence of the scheduling of a hearing by the accountant or his/her attorney within that same period then the accountant (or the court) may (after issuance of "Notice of Default By Reason of Failure to Schedule Hearing" and service thereof by delivery or mail upon the objecting party or his/her attorney not less than ten days prior) file a praecipe (or an order if the notice was issued by the Court or at its direction) with the Clerk of the Orphans' Court to enter judgment of non pros if a hearing has not been scheduled during the ten day period allowed in the Notice. Upon the entry of such judgment the audit of the account shall proceed as if the objection had not been filed. The Notice shall conform to that provided under Pa.R.C.P. Rule 237.1 except that the phrase "...you have failed to schedule a hearing upon your objection..." shall be substituted for the phrase "...you have failed to file a complaint..." and the heading for the said notice shall be as stated above. The Court's Auditor may periodically identify accounts for which objections have been filed and no hearing scheduled to the Court and send the Notice if so directed by the Court.

(h) Accounts/Petitions for Adjudication in proper form and to which no Objections are filed will be audited and confirmed absolutely without court hearing.

6.11.1 Schedule of Distribution: Confirmation of Title to Real Property.

Approval of a schedule of distribution of real estate shall be in the nature of a confirmation of title in the respective distributees.

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

(b) Description of Real Property. Certification by Counsel. Real property shall be described in the manner appearing in the last deed of record and shall, in addition, include information pertinent to the derivation of decedent's title.

6.11.2 Determination of Title to Real Property. PEF Code Section 3546

(a) Contents of Petition. A petition under PEF Code Section 3546 for the determination of title shall set forth:

- (1) The name of the petitioner and the relationship of the petitioner to the decedent;
- (2) The facts on which the claim of the petitioner is based;
- (3) Whether the decedent died testate or intestate, and where, when and to whom letters were granted;
- (4) A description of real property located within the Commonwealth, and the place, book and page of recording the last deed thereto;
- (5) The names and addresses of all known creditors and parties in interest; and
- (6) The facts material to a determination of the title.

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

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

(c) Service. The decree shall be served on all known heirs and creditors of the decedent thirty (30) days prior to final confirmation, which must be at least three (3) months after the date of the decree nisi. The final confirmation date shall be advertised once in the legal publication and once in a newspaper of general circulation, or as the Court shall otherwise direct.

RULE 7
EXCEPTIONS

7.1.1 Filing of Exceptions

Exceptions authorized by State Rule 7.1 and by this Rule shall be filed in the office of the Clerk of the Orphans' Court.

7.1.2 Finality of Certain Orders, Decrees and Adjudications

(a) Orders, Decrees and Adjudications entered in the following matters where no objections have been filed or asserted prior to their entry shall be final and not subject to further exceptions:

- (1) An Adjudication approving an account and distribution as set forth on an audit statement or statement of proposed distribution; and
- (2) Where not less than ten (10) business days' written notice of intention to present the petition and a copy of the petition and proposed Order or Decree has been given to all parties in interest:
 - (A) Those approving settlement of a small estate on petition or settlement of an estate, guardianship or trust administration;
 - (B) Those approving public or private sale of real estate;
 - (C) Those approving a claim for family exemption;
 - (D) Those entered upon petition in other matters where such notice has been given.

(b) Where the moving party has given to all parties in interest not less than ten (10) business days' written notice of intention to present a petition specified in this Rule or, in the case of an account, audit statement or statement of proposed distribution, has given notice of the filing and deadline for filing written objections in accordance with the requirements of the Local Rule 6.9.1(b), the failure by a party in interest to assert objections prior to entry of the Order, Decree or Adjudication shall not be authorized or allowed.

(c) All accounts, audit statements, statements of proposed distribution and petitions subject to this Rule to which objections must be asserted in timely fashion or are waived shall be accompanied by a notice to all parties in interest, signed by the moving party or that party's counsel and substantially in the following form:

(CAPTION)

NOTICE AS REQUIRED BY ERIE COUNTY ORPHANS' COURT RULE 7.1.2 (c)

THE ATTACHED DOCUMENT REQUESTS THAT THE COURT ENTER A FINAL ORDER OR DECREE AND AUTHORIZE THE REQUESTED ACTION WITHOUT FURTHER PROCEEDINGS OR APPEAL **UNLESS** A PARTY IN INTEREST PROMPTLY ASSERTS OBJECTIONS TO THE REQUESTED RELIEF.

(select one or the other of the following paragraphs)

OBJECTIONS TO AN **ACCOUNT, AUDIT STATEMENT OR STATEMENT OF PROPOSED DISTRIBUTION** MUST BE FILED IN WRITING IN THE OFFICE OF THE ERIE COUNTY CLERK OF THE ORPHANS' COURT, ERIE COUNTY Court HOUSE, 140 WEST 6TH STREET, ERIE, PA 16501 NOT LATER THAN THE DEADLINE FOR FILING OBJECTIONS, WHICH IS _____.

OR

OBJECTIONS TO A **PETITION** MUST BE ASSERTED EITHER AT THE TIME OF THE PETITION'S PRESENTATION TO THE Court AS SET FORTH IN A NOTICE ACCOMPANYING THE PETITION OR BY A WRITING FILED IN THE OFFICE OF THE ERIE COUNTY REGISTER OF WILLS PRIOR TO THE DATE AND TIME OF INTENDED PRESENTATION.

IF YOU DO NOT OBJECT TO THE ATTACHED DOCUMENT, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION. IF YOU DO OBJECT TO THE DOCUMENT AND/OR THE PROPOSED ORDER OR DECREE, YOU MUST ASSERT YOUR OBJECTIONS PRIOR TO THE APPLICABLE DEADLINE FOR ACTION. IF YOU FILE WRITTEN OBJECTIONS, YOU MUST MAIL A COPY OF SUCH OBJECTIONS TO THE UNDERSIGNED AND TO ALL OTHER PERSONS WHO ARE PARTIES TO THE MATTER, OR THEIR ATTORNEY(S).

IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THE OFFICE BELOW MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

Erie County Lawyer Referral & Information Service
P.O. Box 1792
Erie, PA 16507
Telephone: (814) 459-4411

Mailing Date

Attorney for

7.1.3 Finality of Other Orders and Decrees

All other Orders and Decrees entered in proceedings shall be final as of the date of filing unless exceptions thereto are taken within twenty (20) days after the date of filing thereof.

7.1.4 Effect of Exceptions Upon Decree Nisi

(a) An exception to any part of a Decree Nisi shall stay the entire Decree, so that the Decree shall not be a final Order until the exception(s) is/are disposed of.

(b) After expiration of the time for filing of exceptions, the Court upon petition filed by any party may enter an Order or Decree declaring those portions of the Decree Nisi not excepted thereto final and binding pending entry of a Final Decree after consideration of the exceptions that have been filed.

(c) The entry of an interim Order or Decree in accordance with Local Rule 7.1.4(b) shall not render any portion of the original Decree Nisi a final Order for purposes of appeal.

7.1.5 Exceptions to Orders and Decrees

(a) Additional Exceptions In the event exceptions are filed by any party, all other parties shall have an additional period of ten (10) days from the service of the initial exceptions within which to file additional exceptions.

(b) Form of Exceptions All exceptions shall set forth, with particularity and in numbered paragraphs, the portion(s) of the Order to which exception is taken and the basis for each exception. Only one exception shall be made per paragraph. Points of law may be addressed in a separate brief.

(c) Procedure for Service of Exceptions All exceptions shall be served upon the judge who made the Order or Decree being excepted to and upon all other parties or their counsel of record promptly after filing. The party filing the exception shall file a certificate of service.

(a) Procedure Following Filing of Exceptions

- (1) Upon the expiration of time for filing additional exceptions and replies to exceptions filed, the Court shall enter an Order setting the time and date of the hearing or argument on the exceptions if it deems the same appropriate, unless the parties should stipulate that no argument and/or hearing is necessary.
- (2) The Court may order the parties to file briefs or memoranda supporting the position(s) taken by the parties, and may set deadlines for their filing.
- (3) Following argument, or upon submission of the exceptions, replies and/or briefs, if any, or upon stipulation and without argument, the Court shall enter an Order or Decree disposing of the exceptions as raised.

7.1.6 Effect of Exceptions on Adjudications, Orders and Decrees

(a) If specific exceptions to one or more portions of an Adjudication, Order and Decree are filed, the Adjudication, Order or Decree shall become final and binding as to matters not affected by the exceptions.

(b) No Adjudication, Order or Decree to which timely exceptions are taken shall become final for purposes of appeal until the exceptions are disposed of, subject to the provisions of State Rule 7.1(f).

7.1.7 Other Exceptions

Exceptions not otherwise covered by State Rules 7.1 and 7.2 or by this Rule shall be filed or presented at such time and place, and in such form, as the Court may direct.

RULE 8

AUDITORS AND MASTERS

8.1.1 Appointment.

(a) Auditors. An Auditor shall be appointed only when all parties in interest, or their counsel, consent thereto in writing.

(b) Master. A Master may be appointed by the Court, on its own motion, or upon the petition of the accountant, or of any party in interest.

(c) Auditors and Masters shall be members of the Bar of this Court.

8.1.2 Manner and to Whom Notice is Given.

(a) An Auditor or Master shall give at least ten (10) days' written notice of his appointment and of the time and place of his or her first hearing to all persons who have appeared of record, and to such other persons and in such manner as the Court may direct.

(b) Notice of succeeding hearings given by the Auditor or Master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

(c) The hearing shall be held at a time and place indicated and not later than forty-five (45) days after the Auditor's or Master's appointment and shall be extended only upon application to the Court for good cause shown.

(d) The report of the Auditor or Master shall be filed within ninety (90) days after appointment and shall be extended only upon application to the Court for good cause shown.

8.6.1 Notice of Intention to File. Exceptions.

(a) An Auditor or Master shall give ten (10) days' written notice to all parties of record of his or her intention to file his report on a day certain and make a copy thereof available for their inspection during such notice period.

(b) Exceptions, if any, shall be filed with the Auditor or Master before the date fixed for the filing of the report and notice thereof shall be given by the exceptant to all parties of record. Upon the filing of exceptions, the Auditor or Master shall consider and dispose of them, and may amend the report if the exceptions are, in the opinion of the Auditor or Master, in whole or part, well founded.

8.7.1 Exceptions Before the Court.

At the hearing before the Court on the confirmation or approval of the report of an Auditor or Master, the exceptant shall be confined to the exceptions filed by that party with the Auditor or Master unless otherwise allowed by the Court.

8.8.1 Filing of Security With Clerk.

The Court may require that security be filed with the Clerk for the compensation of the Auditor or Master and, until filed, the Auditor or Master need not proceed with the performance of his duties.

8.8.2 Compensation of Auditor or Master

Any Auditor or Master appointed by the Court under these Rules shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the Auditor or Master shall recommend and the Court shall direct. The Court may require payment of the Auditor's or Master's fees in advance.

RULE 9

OFFICIAL EXAMINERS

9.1.1 Examiners - Appointment and Ordinary Duties.

The Court may appoint by special Order an examiner or examiners who shall examine the assets held by a fiduciary and make full written report thereon to the Court showing what assets belong to the estate, how they are registered or otherwise earmarked as the property of the estate to which they belong, and where and how the cash belonging to the estate is kept or deposited.

9.1.2 Examiners - Special Duties.

The Court may, in any Order appointing an examiner or examiners, also request the examiner or examiners to accomplish one or more of the following:

- (a) Determine, in the case of a trust, if its purposes are being carried out;
- (b) Determine if the funds and assets in the hands of the fiduciary are being used or applied in accord with any trust instrument, Will, applicable statute, regulation or Court Order;
- (c) Make a written report including findings of fact, conclusions of law; and, when appropriate, recommendations for the consideration of the Court; and
- (d) Such other matters at the Court may designate.

9.1.3 Examiners - Compensation.

Examiners shall be allowed such fees from principal or income, or apportioned between principal and income, as may be directed by the Court.

RULE 10

MATTERS BEFORE THE REGISTER OF WILLS

10.1 Application and Construction of Register of Wills Rules

10.1.2 Application of Rules

These rules shall govern all proceedings before the Register of Wills.

10.1.3 Construction of Rules

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding before the Register of Wills. The Register of Wills at every stage of any action or proceeding before the Register, in the Register's discretion, may disregard any error or defect of procedure which does not affect the substantial rights of the parties in interest.

10.1.4 Filing of Death Certificates – Estates.

(a) A death certificate for the decedent shall be filed with the Register of Wills not later than with the first submission next following the grant of letters.

(b) The Register of Wills shall have authority to impose a filing fee for a death certificate filed subsequent to the submission of a petition requesting grant of letters.

10.1.5 Extension of Time Limitation

The Register of Wills, upon his or her own motion, or upon the motion of any party, may extend any limitation of time prescribed by these rules.

10.2 Pleading and Practice before the Register

10.2.1 Pleading and Practice

The practice, procedure and forms used before the Register of Wills shall be in substantial conformity with the practice, procedure and forms approved by the Supreme Court of this Commonwealth, or, in the absence thereof, the practice, procedure and forms set forth herein or as approved by the Erie County Court of Common Pleas, Orphans' Court Division.

10.2.2 Jurisdiction of the Register

All proceedings to determine the validity of a document offered for probate, and all proceedings to grant or revoke letters testamentary or letters of administration shall be before the Register of Wills of the county wherein the decedent maintained his or her last principal residence, or, if a decedent's estate has been opened, the county where the Register has issued letters or a will has been probated.

10.2.3 Presiding Officer

The Register of Wills, or a duly deputized attorney acting as solicitor for the Register, or a Deputy Register of Wills specifically deputized and authorized by the Register of Wills to conduct hearings, shall be the presiding officer in all proceedings before the Register of Wills.

10.2.4 Evidence

The Rules of Pennsylvania Evidence shall be applicable to all proceedings before the Register of Wills.

10.2.5 Stenographic Record

(a) The Register of Wills may, at the Register's discretion, require or permit a stenographic record to be made, at the parties expense, the cost of which shall be allocated as directed by the Register.

10.2.6 Objections to Evidence

Any objections to any evidence to be presented before the Register shall be made to the Register, or the Deputy Register or attorney acting as solicitor, who is conducting the hearing, who shall rule upon such objections at the time that they are made. In the discretion of the person presiding over the hearing, the presiding officer may defer ruling upon the objection until the conclusion of the hearing.

10.3 Discovery Before the Register

10.3.1 Limitations on Discovery

Discovery before the Register, upon application to the Register by an interested party, shall be limited to the following: depositions, request for production of documents, request for admissions, subpoenas

10.3.2 Objections to Discovery

Objections to discovery shall be addressed to, and shall be decided by, the Register of Wills or the Deputy Register or solicitor presiding over the hearing.

10.3.3 Additional Discovery

Requests for additional discovery beyond the scope of these rules shall be made to the Orphans' Court Division.

10.4 Caveat Practice and Procedure

10.4.1 Form of Caveat

A formal or informal caveat to initiate the contest of a testamentary writing or to contest a petition for letters testamentary or administration shall be filed with the Register of Wills upon the Forms of Caveat as attached to the end of this rule.

10.4.2 Bond and Form of Bond

After the filing of a caveat with the Register of Wills, the Register may fix a bond at an amount determined at the Register's discretion. The bond as filed before the Register shall be filed upon the Bond Form as attached to the end of this rule.

BEFORE THE REGISTER OF WILLS OF ERIE COUNTY, PENNSYLVANIA

Estate of *[name of deceased]*, Deceased

CAVEAT

To the Register of Wills of Erie County:

You are hereby requested to admit no paper to probate as the last will and testament of *[name of deceased]*, deceased, who died on *[date of death]*, at *[specify location]*, and was last domiciled at death in Erie County, Pennsylvania. It is further requested that no letters testamentary or letters of administration be issued upon the above estate in connection with the probate of any paper as the decedent's last will and testament without notice to the undersigned.

*[Name of attorney] for [name of client]
[address and phone # of attorney]
or if no attorney
[address and phone # of caveator]*

BEFORE THE REGISTER OF WILLS OF ERIE COUNTY, PENNSYLVANIA

Estate of [NAME OF DECEASED], Deceased

No. [specify number] of [specify year]

BOND OF CAVEATOR

KNOW ALL MEN BY THESE PRESENTS, that we _____

Name(s) of caveator(s)

and _____
Name(s) of Bonding Agency/Insurance Company

are held firmly bound unto the Commonwealth of Pennsylvania, in the sum of _____ Dollars (\$ _____) to be paid to the said Commonwealth, to which payment well and truly to be made, we do bind ourselves jointly and severally, for and in the whole, our heirs, executors, administrators, successors and assigns, and each and every of them, firmly by these presents.

WHEREAS, the said _____ on the _____ day of _____, _____, filed in the office of the Register of Wills of Erie County, Pennsylvania, a Caveat against the admission to probate of any paper writing alleged to be the last Will and Testament of _____ Deceased, or the granting of Letters _____, on the estate of _____ Deceased;

NOW, THEREFORE, the condition of this obligation is, that if the said Caveator(s) shall pay any and all costs which may be occasioned by reason of such caveat, and which may be decreed by such Register of Wills, or by the Orphans' Court Division of Erie County, to be paid by such Caveator(s), then this obligation to be void, otherwise to remain in full force and effect.

Sealed and dated this _____, the presence of:

Signature of Personal Representative(s)

Signature of Personal Representative(s)

Signature of Bonding Agent

10.4.3 Time for Fixing the Amount of Bond

The Register, after the filing of an informal or formal caveat with the Register, shall enter an Order fixing the amount of bond to be filed, and in the discretion of the Register, the Register may:

- (a) Enter an Order within 10 days after the filing of an informal caveat fixing the amount of the bond; or
- (b) Wait until the contested document is presented for probate or grant of letters, or the filing of a formal caveat, and fix the amount of the bond within 10 days after the presentation of the challenged document or the filing of the formal caveat.

10.5 Citation Practice and Procedure

10.5.1 Request for Citation

Any party in interest may file a petition with the Register of Wills requesting that a citation be issued by the Register directing the appearance of a party before the Register, the production of a document, or requesting other appropriate relief before the Register.

10.5.2 Form of Citation

All citations issued by the Register shall be upon the form adopted or approved by the Register's Office.

10.5.3 Person Responsible for Service of Citation

Service of the citation issued by the Register upon the appropriate parties to be served shall be the responsibility of the party requesting the issuance of the citation.

10.5.4 Method of Service of Citation

(a) All citations issued by the Register shall be served upon the party to whom the citation is directed by certified mail, restricted delivery, with return receipt showing the signature of the party to whom the citation has been directed or by personal service by the Sheriff or a competent adult. Service outside of the Commonwealth shall be as set forth in PA Rule of Civil Procedure 404.

(b) Citations issued by the Register shall be served within 30 days from the date of issue. The Register, upon cause shown, may extend the time for service.

10.6 Notice

10.6.1 Distribution of Pennsylvania Orphans' Court Rule 5.6 and Rule 6.12 Notices

Upon the grant of Letters Testamentary or Letters of Administration the Register shall provide to the personal representative PA Orphans' Court Rule 5.6 and Rule 6.12 Notice forms. The Register shall not be required to mail the forms to the personal representative or counsel of record, or notify the personal representative or the attorney of record of their obligation to file the forms if they have not been timely filed.

10.6.2 Manner of Proceeding

Whenever a notice is to be given by a person, notice shall be in the manner prescribed in Orphans' Court Rule 5.

10.7 Conclusion of Hearing and Decree of Register

10.7.1 Procedure Before the Register Upon Conclusion of the Receipt of Testimony

At the discretion of the Register, at the conclusion of the presentation of testimony from witnesses and the receipt of documents offered into evidence, the Register may require the following from the parties:

- (a) closing arguments from each of the parties or their counsel
- (b) a brief from each of the parties requesting the following to be included in the brief
 - (1) the parties' argument supporting their position
 - (2) proposed Finding of Fact
 - (3) proposed Conclusions of law

The Register, when briefs are required, shall set the time within which the parties shall file their briefs with the Register, which period of time shall not be less than 30 days nor more than 45 days from the date of the conclusion of the hearing.

10.7.2 Decision of the Register

Within 30 days following the conclusion of the hearing before the Register, or within 30 days after the submission of written briefs, if required, whichever is later, the Register shall render a written decision. The Register, in rendering his or her decision, may, but need not, render a written opinion containing findings of fact and conclusions of law, together with a discussion of the issues before the Register. The opinion of the Register shall be accompanied by a **Decree** of the Register containing the Register's decision.

10.8 Appeals from Decision of Register.

10.8.1 Right of Appeal

Any party aggrieved by a decision of the Register shall have the right to appeal the Register's decision to the Orphans' Court Division of the Court of Common Pleas in accordance with PEF Code §908.

10.8.2 Procedure for Appeal from Decisions of the Register of Wills

Any appeal from a decision of the Register of Wills shall be initiated as follows:

- (a) A notice of appeal shall be filed with the Register of Wills on the form attached to the end of this rule;

(b) A petition for appeal and issuance of citation shall be filed with the Clerk of the Orphans' Court, signed by counsel, if any, verified by petitioner and shall set forth the following:

- (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 State Rule or Local Rule. 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 in interest, 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;
- (6) There shall be attached to the appeal petition as exhibits the originals or copies of all Wills, codicils, consents, joinders, approvals, contracts and any other written instruments relied on or pertinent. Exhibits which are not originals and not otherwise certified shall be certified by counsel to be correct. If the petitioner is unable to attach any exhibit, such shall be stated in his petition, with the reason for the inability; and
- (7) Within ten (10) days of filing the petition for appeal, the appellant shall file a bond and secure its approval by the Register and shall request a Citation by the Court to all parties in interest, including those not represented on the record.

(c) Non Pros.

If the bond is not presented within ten (10) days of taking the appeal, the Clerk of the Orphans' Court, upon praecipe of the appellee, shall order a judgment of non pros.

(d) Certified Cases.

When a certification of a dispute has been made by the Register of Wills to the Orphans' Court Division under PEF Code §907, the Court will determine whether pleadings will be required.

(e) Jury Trial.

A person entitled to and desiring a trial by jury, shall make timely demand therefore in accordance with the PEF Code.

(f) Action Upon Default.

If the respondent in any action fails to comply with the requirements of any citation or notice, the Court, upon proof of service thereof, shall make such Order as may be just and necessary.

(g) Enforcement of Decrees.

- (1) Applications for Enforcement, Procedure. All applications to enforce a decree or adjudication for the payment of money or costs or for the delivery of any goods, chattels, or other assets of an estate by a fiduciary or surety, shall be by petition of the person or persons entitled thereto, briefly setting forth the facts. If the application is satisfactory to the Court, an Order will be granted to pay or transfer, assign or deliver, as the case may be.
 - (A) Service. If possible, a copy of the Order, certified by the Clerk or counsel, must be served upon the respondent personally at least ten (10) days prior to the day specified therein. If such service is not possible, service may be made as required of a citation by PEF Code §765.
- (2) Writ of Attachment. If the Order of Court is not complied with on or before the day specified, upon proof of service of the order as required of a citation by Section 765, PEF Code, 20 Pa. C.S.A. Section 765, and upon petition setting forth the necessary facts, a writ of attachment of the person will be awarded.
- (3) Sequestration. If an Order to pay or transfer, assign or deliver has not been complied with on or before the date specified in such Order, upon proof of service of the Order upon a fiduciary or surety in the manner required for the service of a citation by PEF Code §765, or upon proof of service of notice of such Order as provided in Section 768 of said Code, and upon petition setting forth the necessary facts, the Court may direct sequestration of real or personal property or attachment execution.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

Estate of *[name of deceased]*, Deceased

No. *[specify number]* of *[specify year]*

APPEAL FROM PROBATE

To the Register of Wills of Erie County:

You are hereby notified that the undersigned hereby appeals to the Orphans' Court of said county from the decision of the Register of Wills in the above estate admitting to probate as a certain writing and alleged last will and testament of *[name of deceased]*, the deceased, a writing dated *[date of writing]*, and granting letters testamentary thereon.

[Name of Attorney for Appellant]

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

Estate of *[name of deceased]*, Deceased

No. *[specify number]* of *[specify year]*

**PETITION FOR CITATION TO SHOW CAUSE WHY APPEAL FROM PROBATE
SHOULD NOT BE SUSTAINED**

To the Honorable, *[name of judge]*, the Orphans' Court Judge of the said Court:

NOW comes *[name of petitioner]*, petitioner(s), and request(s) your Honorable Court to issue a citation in the above matter directed to the executor of the estate of *[name of deceased]* and the heirs of the estate of *[name of deceased]* to show cause why the decision of the Register of Wills admitting to probate a writing dated *[date of writing]*, as the last will and testament of the above decedent should not be vacated and the appeal therefrom sustained, and says:

1.

The above-named decedent, *[name of deceased]*, was a resident of *[name of county]* County at the time of his/her death on *[date of death]*, with a last principal address of *[last principal address of deceased]*.

2.

Your Honorable Court has jurisdiction over this matter under and pursuant to 20 Pa.C.S.A. §711(1) and (18).

3.

On *[specify date]*, the Register of Wills admitted to probate as the last will and testament of the above-named decedent a writing dated *[date of writing]*. Your petitioner(s) feel(s) the aforesaid last will and testament admitted to probate is not the last will and testament of the decedent and should not have been admitted to probate for the following reasons: *[specify reasons]*.

4.

Your petitioner(s) is(are): (1) beneficiar(y)(ies) under a prior last will and testament of the decedent dated *[date of will]*; or (2) is(are) the person(s) entitled to inherit under the intestate laws of the Commonwealth of Pennsylvania and will be the heir(s) of the decedent if the aforesaid last will and testament is not admitted to probate (*[specify relevant facts]* *[state such other facts as will allow petitioner(s) to either gain or lose if the last will and testament admitted to probate is allowed to stand as the last will and testament of the decedent or is set aside]*).

5.

The name(s) and address(es) of the executor(s) of the last will and testament admitted to probate is(are) as follows: *[name of executor]* *[address of executor]*.

6.

The name(s) and address(es) of all other parties in interest is(are) as follows: *[name of party/parties in interest] [address of party/parties in interest]*.

7.

The proceedings before the Register of Wills have consisted of the admission to probate of a purported will of the decedent dated *[date of purported will]*, and the grant of letters testamentary thereon unto *[name of person granted letters]*. A copy of the Register's decree is attached hereto and marked Exhibit A.

8.

On *[date of filing]*, your petitioner(s) filed an appeal from the Register's order admitting the will to probate, a copy of said Notice of Appeal having been served upon the Register of Wills on *[date of service]*. A true and correct copy of the Notice of Appeal is attached hereto and marked Exhibit B.

9.

Your petitioner(s) believe(s) and therefore aver(s) that the testator (lacked testamentary capacity) (executed the aforesaid last will and testament as the result of undue influence), and in support of said allegation allege(s) as follows: *[specify allegations]*.

[OR]

The signature of the testator is not the signature of the testator, but is a forgery and in support thereof the petitioner(s) allege(s) as follows: *[specify allegations]*.

[OR]

The aforesaid last will and testament is not the last will and testament of the decedent for the reason that the aforesaid will was procured by fraud and misrepresentation, and in support of said allegation, the petitioner(s) allege(s) as follows: *[specify allegations]*.

WHEREFORE, petitioner(s) request(s) that your Honorable Court issue a citation upon the respondent(s) to show cause why the appeal from the decree of the Register of Wills admitting to probate the writing dated *[date of writing]* should not be sustained, and that the decree of the Register of Wills be opened to permit the Register to receive and act upon (a petition for probate of an earlier writing dated *[date of writing]*, as the last will and testament of the decedent) (a petition for letters of administration on the estate of decedent).

[Name of Attorney for Petitioner(s)]

[Add verification of petitioner(s).]

10.8.3 Decree of Orphans' Court upon Sustaining Appeal.

Upon appeal from a decision of the Register of Wills, if the Orphans' Court sustains the appeal, the Court shall:

(a) In sustaining an appeal from probate shall direct the Register to revoke its decree of probate;

(b) In sustaining an appeal from the grant of letters shall direct the Register to revoke its grant of letters;

(c) In an appropriate case, if the Court directs the revocation of a decree of probate or the grant of letters, the Court shall direct the Register to enter an appropriate decree of probate or grant appropriate letters testamentary or administration to the appropriate person or persons.

10.8.4 Decree of Orphans' Court upon Dismissing Appeal

Upon dismissing an appeal, the Orphans' Court shall enter a final Decree dismissing the appeal from the Register's decree.

RULE 12
SPECIAL PETITIONS

12.0.1 Settlement of Small Estates.

(a) Form of Petitions. Contents.

Petitions under PEF Code § 3102, as amended for the settlement of small estates shall set forth:

- (1) The name and address of the petitioner and the relationship of the petitioner to the decedent.
- (2) The name, date of death and domicile of decedent, whether the decedent died testate or intestate, the dates of the probate of the Will and of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, amount.
- (3) The names and relationship of all beneficiaries entitled to any part of the estate under the Will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the PEF Code and whether any of them are minors, incapacitated or deceased with the names of their fiduciaries.
- (4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.
- (5) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit.
- (6) An itemization of all administrative costs, funeral expenses, debts and distributions, and of assets then remaining for distributions.
- (7) A list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted.
- (8) That ten (10) business days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown.
- (9) A prayer for distribution of the property, setting forth the persons entitled and their distributive shares, and requesting the discharge of the personal representative and the release of surety, if letters have been granted and advertised.

(b) Required Exhibits.

The following exhibits shall be attached to the petition:

- (1) The original of the decedent's Will, if it has not been probated.
- (2) Joinders or notice to unpaid beneficiaries, heirs and claimants.
- (3) A receipt for the filing of an inheritance tax return reporting the assets which are the subject of the petition.
- (4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least ten (10) business days prior to presentation of the petition.
- (5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

12.1.1 Family Exemption. Additional Requirements.

A petition for the family exemption shall also set forth in separate paragraphs:

- (a) The name, residence and date of death of the decedent;
- (b) The name, address and relationship of the petitioner to the decedent, and whether the petitioner was a member of the same household as the decedent at the date of decedent's death;
- (c) The name of the spouse of the decedent, if any, and whether the spouse forfeited spousal rights;
- (d) Whether the decedent died intestate or testate, and the date of the appointment of the fiduciary, if any;
- (e) The description and value of the property claimed;
 - (1) If an inventory has been filed, the petition shall set forth the value of the property claimed as fixed in the inventory.
 - (2) If it is not included in the inventory, an appraisal or written confirmation of the value of the property as of the date of death must be attached to the petition, unless the property claimed consists of personal property in the form of cash, bank accounts or government bonds whose value is ascertainable from its face; and
- (f) That ten (10) business days' prior notice of intention to present the petition at a stated regular session of Motion Court has been given to the personal representatives, or when no letters have been granted, to the parties adversely affected. The ten (10) days' notice requirement shall not be required in the case of a petition filed by a surviving spouse, nor shall ten (10) days' notice be required if the petition contains consents executed by all other parties in interest.
- (g) The family exemption petition may be included in a petition for settlement of small estates.

12.5.1 Minor's Estate. Appearance Before the Court. Minor over Fourteen.

A minor over the age of fourteen (14) shall appear in person at the presentation of the petition for appointment of guardian. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition.

12.5.2 Minor's Estate. Restricted Account.

(a) No guardian shall exercise any authority under his appointment until the guardian shall have filed and had approved by the Court a bond in an amount directed by the Court, except where the guardian is a corporate fiduciary authorized to act as such under applicable law.

(b) In lieu of bond, the Court may authorize the guardian to deposit the cash in a federally insured interest bearing account or a money market or cash management account guaranteed by the Security Investors Protection Corporation, with the restriction, "Not to be withdrawn prior to the minor's attainment of the age of eighteen (18) except on Order of Court." Proof of such deposit shall be presented to the Clerk of the Orphans' Court within thirty (30) days.

12.5.3 Minor's Estate Not Exceeding Amount Established by PEF Code.

(a) Disposition. In General. If the value of the real and personal estate of a minor does not exceed the amount established by the PEF Code, the Court may:

- (1) Authorize payment or delivery thereof to the minor, or the parent or other person maintaining the minor; or
- (2) Direct the deposit of the money in a restricted account or accounts, in the name of a natural guardian of the minor, or of the minor alone; or
- (3) Make such provision for the retention or deposit of securities or other assets, as the Court shall deem for the best interests of the minor.

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

12.5.4 Minor's Estate. Allowance.

When a petition is necessary for an allowance from a minor's estate, the petition shall set forth:

- (a) The manner of the guardian's appointment and qualification, and the dates thereof;
- (b) The age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, and the name and age of the minor's spouse and children, if any;
- (c) The value of the minor's estate, real and personal, where located and the net annual income;
- (d) The circumstances of the minor, whether employed or attending school; and, if the minor's parents are living, the reason why the parents are not discharging their duty of support;
- (e) The date and amount of any previous allowance by the Court;
- (f) The financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; including whether there is adequate provision for the support and education of the minor, spouse and children.
- (g) If the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if known, for the guardian's failure to do so.

12.5.5 Minors and Incapacitated Persons; Settlement, Compromise or Discontinuance

(a) Contents of Petition. The Petition for Settlement, Compromise or Discontinuance shall:

- (1) State the name, residence and parentage of the minor or incapacitated person;
- (2) Set forth the factual circumstances of the case;
- (3) Set forth the injury sustained and its effect on the property and health of the minor or incapacitated person;
- (4) Itemize the expenses and fees incurred in the treatment of the injuries or substantiating and establishing the settlement or compromise;

- (5) State whether proceedings have been conducted in a civil action concerning the claim and if so, include detail as to the nature of such proceedings and the presiding Judge;
- (6) State the reason why the settlement or compromise is a proper one;
- (7) State the amount of counsel fees incurred in obtaining the agreement for settlement or compromise;
- (8) Include a proposed Order for hearing on the Petition for approval;
- (9) Include a proposed Order for distribution.

(b) **Manner of Presentment.** Petitions under this Rule shall be presented in accordance with Erie County Civil Procedure Rule 2039.

The Judge to whom the Petition is submitted may require the personal appearance of the minor or incapacitated person, the guardian of the minor, the doctor or any other relevant party, as well as the production of any other evidence deemed necessary for approval of the Petition.

(c) **Notice of Hearing.** Notice of hearing on the Petition shall be given by United States first class mail, or as the Court shall direct, to all parties which shall include the minor or incapacitated person, the minor's parents, the minor's or incapacitated person's guardian(s) and any other person so designated by the Local Rules, the State Rules or the Judge to whom the Petition is presented. Proof of service shall be filed with the Court pursuant to the Local Rules.

(d) **Filing of the Petition.** Petitions presented under this Rule shall be filed as follows:

- (1) If the Petition pertains to a matter as to which a civil action has been commenced and docketed, the original Petition shall be filed with the Prothonotary and a copy of the Petition shall be filed with the Register of Wills.
- (2) If the Petition pertains to a matter as to which no civil action has been commenced, the original Petition shall be filed with the Register of Wills.

(e) Petitions under this Rule shall be substantially like the form at the end of this Rule.

(f) **Confirmation of Deposits into Restricted Accounts.** When the Court directs the deposit of the sum payable to the minor or incapacitated person be placed in a restricted account, the deposit shall be made with a copy of the approving Court Order not later than five (5) business days after receipt of the settlement funds by the person directed to make the deposit. The designated depositor shall file or cause to be filed with the Register of Wills proof of the restricted account deposit in compliance with the approving Court Order, including the amount, within thirty (30) days after the date of the Order.

Committee Comment. The objective of subsection (b) of this Rule is to ensure that an assigned Judge in a civil action who has presided over proceedings which would facilitate an evaluation of the facts and proposed settlement consider a petition under this Rule, petitions in other cases being presented to the Motions Judge of the Orphans' Court. The purpose of including item 6 in the form petition is to make clear potential involvement by the assigned Judge in a civil action so that a Motions Judge of the Orphans' Court to whom a petition is presented can, in his or her discretion, determine whether presentation and determination in Orphans' Court is appropriate in the facts of the case.

(CAPTION)

PETITION FOR SETTLEMENT, COMPROMISE, DISCONTINUANCE AND DISTRIBUTION FOR A MINOR/INCAPACITATED PERSON

To the Judge of your Honorable Court:

This Petition respectfully represents:

1. Petition is _____, who resides at _____, and is the parent, guardian of the minor/incapacitated person, age _____ years, born the _____ day of _____, _____, and who resides at _____.

2. The minor's parents are _____, father, and _____, mother, who reside at _____.

3. The minor/incapacitated person's claim arises out of the following circumstances (set forth the date, place, time and details): _____.

4. The minor/incapacitated person sustained injuries as follows (set forth description of the injuries, the effect of the injuries on the property and health of the minor, including applicable medical reports and records, recovery or prognosis): _____.

5. The following expenses were incurred in the treatment of the injuries to the minor/incapacitated person (itemize expenses incurred, noting whether paid or owed); state if any are to be reimbursed out of the settlement and if so, to whom they are payable): _____.

6. A civil action pertaining to this claim has/has not been commenced. If an action has been commenced and is not identified above, docketing information pertaining to said action is as follows: _____, _____. Proceedings in said civil action before the assigned Judge include: _____.

7. Petitioner has received an offer from _____ to settle the minor's/incapacitated person's claim for the amount of \$_____. A copy of the offer is attached hereto as Exhibit _____.

8. Petition believes the settlement offered is in the best interest of the minor/incapacitated person for the following reasons (give reasons): _____.

9. _____, Esq. has been the attorney for the minor/incapacitated person in this matter and requests a counsel fee for services detailed in Exhibit _____ attached hereto which, in Petitioner's opinion, is a reasonable fee. Counsel also requests reimbursement for disbursements of \$_____ as shown on Exhibit _____.

10. Petitioner and counsel are satisfied the offer of settlement is reasonable and proper in this matter.

11. To consummate the offered settlement, Petitioner, on behalf of the minor/incapacitated person, will be required to execute a release, a copy of which is attached hereto as Exhibit _____, and obtain approval of the settlement by your Honorable Court.

12. Petitioner requests this Honorable court to approve the within offer of settlement and to direct disbursement of the proceeds as follows:

- (a) _____, Esq. - attorney fee \$ _____
- (b) _____, Esq. - reimbursement \$ _____
- (c) Other: _____ \$ _____
- (d) Petitioner on behalf of the minor/incapacitated person as per attached Court Order \$ _____

13. The Petitioner requests this Honorable Court to direct the deposit of the above balance for this minor person into one or more federally insured savings accounts in the name of the minor/incapacitated person, to be marked "Not to be withdrawn before the _____ day of _____, _____ (date of minor's 18th birthday) or by further Order of this Court (other disposition may be requested as provided by statute).

WHEREFORE, Petitioner requests this Honorable Court to enter an Order approving the above settlement, directing distribution of the proceeds and expenses as set forth above and authorizing the Petitioner to execute the Release upon payment of the sum of \$_____.

Respectfully submitted,

Petitioner

NAME OF LAW FIRM

BY: _____

Address
Telephone
Attorney No.

VERIFICATION

I, _____ (Petitioner), hereby verify, subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

ORDER

AND NOW, this _____ day of _____, 200__, upon consideration of the foregoing Petition and this Court being satisfied as to the reasonableness of the settlement and that the settlement is in the best interest of the minor/incapacitated person hereto, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The settlement set forth in the Petition in the above matter presented to the Court is approved as being in the best interest of the minor/incapacitated person, _____.

2. Counsel fees to the firm of _____, Attorneys-at-Law, of \$_____ and the reimbursement of _____, Esq. for expenses, \$_____ from the settlement proceeds are approved.

3. The settlement sum of \$_____ is directed to be disbursed as follows:

- | | | |
|----|--|----------|
| A. | _____, Esq.
(attorney's fees per fee agreement) | \$ _____ |
| B. | _____, Esq.
(reimbursement for expenses) | \$ _____ |
| C. | Other: _____ | \$ _____ |
| D. | _____
(minor/incapacitated person's name) | \$ _____ |
| | Total | \$ _____ |

4. The total sum payable to _____ (minor/incapacitated person's name), \$ _____, is directed to be deposited by his/her parents, _____ (parent's names) in a savings account in the name of the parent as natural guardian of _____ (minor/incapacitated person's name) in a local bank or savings and loan association, either FDIC or FSLIC insured, said account to be marked that no withdrawal may be made until the _____ day of _____, 20__ (date of minor/incapacitated person's birthday) or upon further Order of this Court. This deposit shall be made within five (5) business days following receipt of the minor/incapacitated person's proceeds.

5. Upon receipt of the settlement proceeds, _____ is authorized to execute and deliver a Release in the form as attached to the foregoing Petition.

6. Petitioner shall file with the Register of Wills proof of the restricted account deposit in accordance with this Order within thirty (30) days of the date of this Order.

J.

12.6.1 Appointment of Trustee. Exhibits.

The following exhibits shall be annexed to the petition:

- (a) A copy of the trust instrument;
- (b) The consent by the proposed trustee to act as such; and
- (c) Any consents or joinders of parties in interest.

12.6.2 Appointment of Successor Co-Trustee

When the governing instrument requires two or more co-fiduciaries and one is unable to serve for any reason, it shall be the obligation of the other fiduciary to petition the Court for the appointment of a successor co-fiduciary.

12.7.1 Discharge of a Personal Representative. Section 3531 - PEF Code.

When the gross real and personal estate of a decedent does not exceed the amount established by statute, the personal representative, after the expiration of one year from the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the PEF Code. The petition shall conform as far as practicable to the requirements of a petition for settlement of a small estate under the provisions of Section 3531 of PEF Code.

12.9.1 Public Sale. Contents of Petition. Additional Requirements.

(a) Personal Representative. A petition by a personal representative to sell real property at public sale, under Section 3353 of the PEF Code shall set forth in separate paragraphs:

- (1) The name, residence and date of death of the decedent, whether the decedent died testate or intestate and the date of the grant of letters;
- (2) That the personal representative is not otherwise authorized to sell by the PEF Code; or is not authorized or is denied the power to do so by the Will; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;
- (3) Whether an inventory and appraisal have been filed, the total value of the property shown therein; and the value at which the real property to be sold was included therein;
- (4) If the personal representative entered bond with the Register, the name of the surety and the amount of such bond;
- (5) The names and relationships of all parties in interest; a brief description of their respective interests; whether any of them are minors, adjudicated incapacitated or deceased, and, if so, the names and the record of the appointment of their fiduciaries, if any;
- (6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment x common level ratio factor); and
- (7) Sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) Trustee. A petition by a trustee to sell real property at public sale, under Section 3353 of the PEF Code, shall also set forth in separate paragraphs:

- (1) How title was acquired, stating the date and place of probate of the Will or recording of the deed;
- (2) A recital of the relevant provisions of the Will or deed pertaining to the real property to be sold, and the history of the trust;
- (3) The names and relationships of all parties in interest; a brief description of their respective interest; whether any of them are minors, adjudicated incapacitated or deceased, and if so, the names and record of appointment of their fiduciaries, if any;
- (4) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment x common level ratio factor);
- (5) That the trustee is not otherwise authorized to sell by the PEF Code, or is denied the power by the trust instrument; or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and
- (6) Sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

(c) Guardian of Minor. A petition by a guardian to sell real property at public sale, under Section 3353 of the PEF Code, shall set forth in separate paragraphs:

- (1) The age of the minor;
- (2) The names of the minor's next of kin and the notice given them of the presentation of the petition;
- (3) How title was acquired, stating the date and place of probate of Will or recording of the deed;
- (4) A recital of the provisions of the Will or deed relating to the real property to be sold;
- (5) The nature and extent of the interest of the minor, of the guardian and of third persons in the real property;
- (6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (current county tax assessment x common level ratio factor); and
- (7) Sufficient facts to enable the Court to determine that the proposed sale will be in the best interest of the minor.

(d) Guardian of Incapacitated Person. A petition by a guardian to sell real property at public sale, under Section 3353 of the PEF Code, shall set forth in separate paragraphs the same information as required for the sale by a guardian of a minor with sufficient additional facts to enable the Court to determine that the proposed sale will be in the best interest of the incapacitated person.

12.9.2 Public Sale. Exhibits.

The following exhibits shall be attached to the petition by a personal representative, trustee or guardian, to sell real property at public sale:

- (a) Certification that ten (10) business days' notice has been given to those parties who do not consent or join; and
- (b) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

12.9.3 Public Sale of Real Property. Notice. Confirmation.

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

(b) Confirmation. If no objection is filed, the Court may enter a decree confirming the sale upon submission of a return of sale as provided by Local Rule.

12.9.4 Public Sale. Security.

On the return day of the sale, the Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter, or will excuse the fiduciary from entering additional security.

12.10.1 Private Sale. Contents of Petition. Additional Requirements.

(a) Where the power to sell real property is not granted by the will, trust instrument or statute, a petition by personal representative, trustee or guardian, to sell real property at private sale shall also conform as closely as practicable to all requirements of these Rules with regard to a petition to sell real property at public sale.

(b) When seeking Court approval of a private sale or transfer to a personal representative under 20 Pa. C.S.A. §3356 and/or Pennsylvania Orphans' Court Rule 12.10, the petitioner may avoid the need to present/secure a second affidavit of value provided that all possible beneficiaries execute a written consent to the relief requested within the petition. The consent shall state that the consenting beneficiary:

- (1) has reviewed the petition and affidavit attached to the petition;
- (2) is satisfied with the value expressed therein, and
- (3) waives the requirement that a second affidavit of value be presented.

The Court Order attached to the petition approving the sale shall not address issues related to the title of the purchaser.

12.10.2 Private Sale. Exhibits.

Personal Representative, Trustee, Guardian. The following exhibits shall be attached to the petition by a personal representative, trustee or guardian to sell real property at private sale:

- (a) Certification that ten (10) business days notice has been given to those parties who do not consent or join; and
- (b) A copy of the agreement of sale; and
- (c) Affidavits in the form required by State Rule 12.10(b) unless otherwise ordered by the Court.

12.10.3 Private Sale. Higher Offer.

Any person desiring to make a substantially higher offer for real property offered at private sale may do so at the time the petition of the fiduciary for leave to make such private sale is presented to the Court, whereupon the Court will make such Order as it deems advisable under the circumstances.

12.10.4 Private Sale. Security.

The Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter, or will excuse the fiduciary from entering additional security.

12.10.5 Petition to Fix or Waive Additional Security. Personal Representatives.

(a) Form of Petition. In a sale, whether public or private, of real estate by a personal representative acting without benefit of an Order of Court directing or authorizing such sale, but who was required to give bond, the personal representative shall present a petition to the Court before the proceeds of the sale are paid by the purchaser, setting forth:

- (1) The date of death of the decedent;
- (2) The date of the grant of letters to the petitioner;
- (3) The amount of the bond or bonds filed by the petitioner, the date of such filing and the name or names of the surety;
- (4) The total valuation of the personal estate as shown in the inventory and appraisal, if any; and the total proceeds of any real estate sold previously;
- (5) A short description of the real property sold, the name of the purchaser, the amount of the consideration to be paid and the terms of the sale;
- (6) A list of all liens of record known to petitioner, including mortgages, delinquent taxes, judgments, etc., and the names and relationships of all parties in interest; with a brief description of their respective interests; and
- (7) A prayer for an Order fixing the amount of additional security or for an Order excusing the filing of additional security.

(b) Surety on Additional Bond. The surety on any additional bond, except for cause shown, shall be the same as on the original bond.

12.11.1 Mortgage of Real Property. Additional Requirements.

(a) Contents of Petition. A petition to mortgage real property by a personal representative, trustee or guardian, shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed mortgage loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed mortgage should be approved.

(b) Exhibits. There shall be attached to the petition certification that ten (10) business days' notice has been given to those parties who do not consent or join.

12.12.1 Inalienable Property.

In addition to the requirements of Chapter 83 of the PEF Code and State Rule 12.12, in the case of:

(a) Public Sale. The content of the petition, required exhibits, notices, confirmation and security shall conform to the requirements of Rule 12.9.1 through 12.9.4.

(b) Private Sale. The content of the petition, required exhibits, provisions as to higher offers, security and petitions to fix or waive additional security shall conform to the requirements of Rule 12.10.1 through 12.10.5.

(c) Mortgage. The content of the petition, required exhibits, notices and action on security shall conform to the requirements of Rule 12.11.1.

12.12.2 Notice. Discretion of Court

If it appears that all parties having a present or potential interest may not have been identified or served with notice, the Court shall have discretion to issue a citation and require such additional notice as it deems appropriate.

12.12.3 Inalienable Property. Real Estate or Fiduciaries in Other Counties.

(a) Fiduciaries whose appointments originated in this county shall obtain leave of this Court to petition the Court of another county of this Commonwealth, under the Inalienable Property Act, to sell or mortgage real property located in that county. Such leave may be obtained by petition to this Court setting forth briefly the substantial averments of a petition for the sale or mortgage of real property.

(b) Fiduciaries whose appointments originated in other counties of this Commonwealth shall obtain leave of the Court of their appointment to petition this Court under Inalienable Property Act to sell or mortgage real property located in this County. The petition to this Court shall comply with the provisions of these Rules with regard to the sale or mortgage of real property and shall include, as exhibits, copies of the petition and of the decree of the Court of origin.

RULE 13

DISTRIBUTION - SPECIAL SITUATIONS

13.3.1 Unknown Distributee. Contents of Report.

If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report at the time of the filing of the audit or petition to settle a small estate,³ verified by affidavit of the fiduciary or his counsel, in which shall be set forth the nature of the investigation³ made to locate the heirs of the decedent, in complete detail.

³ The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership; school records; social security; Veteran's Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

RULE 14

INCAPACITATED PERSONS

14.1.1 Procedure

(a) All petitions requiring a hearing shall first be submitted along with a petition cover sheet, proposed Order for scheduling a hearing and proposed final decree to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

- (1) Upon the assignment of a hearing date by the Family/Orphans' Court Administrator, the original Petition or Motion and one copy shall be filed with the Clerk of the Orphans' Court. A copy shall also be given to the Family/Orphans' Court Administrator.
- (2) All other pleadings not requiring a hearing shall be filed directly with the Clerk of the Orphans' Court.

(b) Emergency petitions requiring the immediate attention of the Court shall be presented to the Family/Orphans' Court duty judge.

(c) The petitioner shall provide a copy of the petition and any Orders or proposed Orders to the Clerk of the Orphans' Court who shall prepare and attach a Citation and Notice as required by PEF Code §5511(a).

(d) The petition and citation shall be served personally upon the alleged incapacitated person by the Orphans' Court Investigator.

(e) The petitioner shall serve a copy of the guardianship petition and the Notice of Guardianship form provided by the Clerk of the Orphans' Court by first class mail to the following persons:

- (1) All persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at the time;
- (2) The person or institution providing residential services to the alleged incapacitated person;
- (3) Any attorney in fact under a durable power of attorney;
- (4) Such other parties as the Court may direct.

(f) All petitions required by this rule shall be signed by the moving party or that party's counsel and shall contain the following notice:

(CAPTION)

NOTICE OF GUARDIANSHIP

This notice is to advise you that a Petition for Guardianship has been filed seeking the appointment of a guardian for the above named individual. A hearing on the petition is scheduled for the _____ day of _____, 20____, at _____ M. before Judge _____ in Court Room _____ of the Erie County Court House, 140 West Sixth Street, Erie, Pennsylvania 16501.

You do NOT have to attend this hearing if you do not oppose the Petition.

*If you intend to object to the proposed guardianship or otherwise contest this action, you must **immediately** send written notice to the assigned Judge and the Family/Orphans' Court Administrator at the Erie County Court House, 140 West Sixth Street, Erie, Pennsylvania 16501. A copy must also be sent to the attorney for the Petitioner at the address listed below.*

Your notice must be filed at least seven (7) days before the hearing.

Attorney for Petitioner
Street Address
City State Zip
Telephone

Date: _____

14.2.1 General Practice and Procedure

(a) Petition Contents. A Petition to adjudicate a person incapacitated and for the appointment of a guardian shall contain all of the information required by PEF Code §5511(e) and State Rule 14.2 and shall also include the following additional information:

- (1) Whether the alleged incapacitated person executed a durable Power of Attorney and the name and current address of the attorney in fact.
- (2) Whether the alleged incapacitated person executed a Will or other testamentary document and the location of the original document.
- (3) Whether the alleged incapacitated person executed a living will, advance health care directive or similar document and the location of the original document.

(b) Notice of Representation. The petitioner shall notify the Court in writing at least seven (7) days prior to the hearing whether counsel has been retained by or for the alleged incapacitated person. If counsel has been retained, the petitioner shall provide the name, address and telephone number of counsel.

(c) Evidence. The evidence presented may be in accordance with PEF Code §5518 as provided in the form at the end of this Rule.

(d) Presence of Alleged Incapacitated Person. The alleged incapacitated person shall be present at the hearing unless:

- (1) The Court is satisfied, upon the deposition or testimony of or sworn statement (as provided by the form at the end of this Rule by a physician or licensed psychologist, that the alleged incapacitated person's physical or mental condition would be harmed by being present at the hearing; or
- (2) It is impossible for the alleged incapacitated person to be present because of absence from the Commonwealth.

IN RE : IN THE COURT OF COMMON PLEAS
:
: OF ERIE COUNTY, PENNSYLVANIA
: Orphans' Court Division
:
:
An Alleged Incapacitated Person : No.

AFFIDAVIT OF PHYSICIAN
PURSUANT TO ERIE COUNTY ORPHANS' COURT RULE 14.2.1(c)

The undersigned, a physician licensed to practice medicine in Pennsylvania does hereby swear or affirm that he/she has examined the following individual and that the information below is accurate and complete to the best of his/her knowledge information and belief:

1. Identification of the Alleged Incapacitated Person
 - a. Name _____
 - b. Address _____
2. Reason for Evaluation: Plenary Guardianship of the Person and/or Estate.
3. Affidavit Completed by:
 - a. Name _____
 - b. Office Address _____
4. Are you currently licensed in Pennsylvania? ___ Yes ___ No
5. Are you currently licensed in any other states? ___ Yes ___ No
If so, where? _____
6. Briefly describe your educational background, professional degrees, Board

Certification, etc: _____

7. Which hospitals are you affiliated with: _____

8. Please list the date(s) upon which you've examined, evaluated or treated the Alleged Incapacitated Person within the past six (6) months: _____

9. Please provide your diagnosis of the patient's current condition: _____

10. Please provide your prognosis for the patient's condition and recovery: _____

-
11. Is the patient able to feed him/herself? Yes No
12. Is the patient able to dress him/herself? Yes No
13. Is the patient able to walk unassisted? Yes No
14. Is the patient's ability to receive and evaluate information and to make and communicate decisions significantly impaired? Yes No
15. Is the patient presently able to manage her finances or to meet essential requirements for her physical health and safety. Yes No
16. Is the patient presently able to make and communicate decisions relating to legal, financial or other matters? Yes No
17. Would it be medically advisable for the patient to be transported to attend the Guardianship hearing at the Courthouse? Yes No

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: _____

Signature of physician

Printed name of physician

Sworn to and subscribed
before me this _____ day
of _____, 20____.

IN RE:

IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY, PENNSYLVANIA

Orphans' Court Division

An Alleged Incapacitated Person

No.

AFFIDAVIT TO EXCUSE ALLEGED INCAPACITATED PERSON FROM COURT HEARING PURSUANT TO ERIE COUNTY ORPHANS' COURT RULE 14.2.1(d)(1)

I, _____, am a licensed physician (psychologist). I have been licensed to practice in the Commonwealth of Pennsylvania. I do hereby swear or affirm that within a reasonable degree of medical certainty I believe that the above referred to alleged incapacitated person would not be furthered by his/her attendance at the Court hearing regarding his/her incapacity at the Erie County Court House because he/she is incapable of comprehending the nature of the proceedings or participating in any meaningful way in the proceedings. In my professional opinion his/her physical or mental condition would be harmed by the transportation to the Court Room and by his/her attendance at the Court hearing.

I have based my opinion on a personal examination of the individual and my records pertaining to his/her condition.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Signature of physician or licensed psychologist

Sworn to and subscribed
before me this _____ day
of _____, 20____.

14.2.3 Proof of Service. Prior to the hearing, the petitioner shall file an affidavit or verification that the proper service of notice of the petition and hearing was made to all parties listed in the petition and to any other parties required by the Court to be notified.

14.2.4 Emergency Guardianships.

(a) A petition for emergency guardianship under PEF Code §5513 may be filed by separate petition or with a petition for appointment of a permanent guardian. Reasons for the need for emergency guardianship shall be clearly set forth in the petition.

(b) Notice to the alleged incapacitated person and other interested persons of the petition and hearing shall be required unless it appears to the Court not to be feasible under the circumstances. It shall not be necessary for a citation to issue or be served on the alleged incapacitated.

(c) The emergency guardian of the estate shall account to the Court for all funds it receives and expends during its appointment as emergency guardian.

(d) At the hearing for the appointment of emergency guardian the provisions of PEF Code §5518, regarding medical testimony, shall apply.

(e) The emergency appointment may be continued by the Court until the final disposition of the petition for determination of incapacity.

14.2.5 Post Adjudication Duties.

(a) Annual report. Within one year from the date of the appointment, and annually thereafter or otherwise as the Court may direct, the guardian shall file a periodic report in a form approved by the Court.

(b) Final Accounting. Upon the death of an incapacitated person, upon an adjudication of capacity or as the Court may require, the practice and procedure with regard to the filing and auditing of accounts as well as distribution of assets comprising the estate of a person who has been adjudicated incapacitated shall conform with the practice and procedures governing trustees' accounts and small estates.

(c) Additional Assets. If, upon the filing of the Inventory, or any time thereafter, it appears that the value of the estate which has, or is about to, come into the possession and/or control of the guardian, exceeds the amount set forth on the original petition by \$10,000 or more, the guardian shall notify the Court which may determine whether additional security is necessary.

(d) Testamentary Writings, Living Wills and Advance Health Care Directives. The original and a copy of the will or other testamentary writing and any living will or advance health care directive of the incapacitated person shall be submitted to the Court for inspection as soon as possible following the hearing or, in any event, no later than the date set for the filing of the Inventory. The Court shall compare the copy with the original, retain the copy, and return the original to the guardian.

14.2.6 Modification of Guardianship.

The guardian, incapacitated person or other interested party may petition the Court for review of the guardianship as follows:

- (a) When the incapacitated person has regained capacity;
- (b) Where there has been a significant change in the ward's capacity;
- (c) Where there is a significant change in the need for guardianship services;
- (d) Upon request for the appointment of a successor guardian;
- (e) For any other good cause shown.

14.3.1 Adjudication of Capacity.

(a) A petition to adjudicate that a person previously adjudged incapacitated has regained capacity shall set forth:

- (1) The date of the adjudication of incapacity;
- (2) The name and address of the guardian;
- (3) If the incapacitated person has been a patient in a mental hospital, the name of the institution, the date of admission and the date of discharge;
- (4) The present address of the incapacitated person and the names of all persons residing in the same household.
- (5) The names and addresses of the next of kin of the incapacitated person;
- (6) An averment that the mental health of the incapacitated person has been restored; and,
- (7) A request that the guardian be directed to file an account or other final report as the Court may require.

(b) Proof of Service. Proof of service of notice of the hearing to all parties in interest shall be presented at the time of the hearing.

RULE 15
ADOPTION

15.1.1 Procedure.

(a) All Petitions or Motions requiring a hearing including those pertaining to Adoptions, Involuntary Terminations, Voluntary Relinquishments and Confirmation of Consent shall first be submitted to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(b) Upon the assignment of a hearing date the original Petition or Motion shall be filed with the Clerk of the Orphans' Court and a copy of the Order setting the date of the hearing shall be given to the Family/Orphans' Court Administrator.

(c) All other pleadings not requiring a hearing shall be filed with the Clerk of the Orphans' Court.

(d) Any Motion or Petition requiring immediate attention of the Court shall be presented at Family/Orphans' Court Motion Court, with notice to all parties as required by Erie County Civil Rule 440.

15.4.1 Involuntary Termination of the Parental Rights of a Putative Father Whose Identity or Whereabouts Cannot be Ascertained.

The parental rights of a natural or putative father whose identity or whereabouts cannot be ascertained must be terminated by an involuntary termination proceeding prior to approval of a final adoption.

(a) The involuntary termination petition must aver that the natural mother does not know the identity or whereabouts of the natural or putative father, must include his last know address, if known, and must also specify all attempts made by the Petitioner to determine the correct identity of the natural or putative father.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa. R.C.P. 430.

(c) Publication shall include, as a minimum, the contents of the citation attached to the Involuntary Termination Petition. Proof of publication shall be submitted to the Court prior to hearing.

(d) Exceptions to an Involuntary Termination Decree must be filed within ten (10) days of the filing of the Decree pursuant to Rule 7.

15.4.2 Petition to Terminate Putative Father's Rights Under §2503(d) and §2504(c)

(a) Contents. A Petition to terminate a putative father's rights under 23 Pa.C.S.A. Section 2503(d) or 2504(c) shall contain the following:

- (1) The names and addresses of the Petitioners;
- (2) The names and addresses of the birth parents and the putative father;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date of any proceedings to terminate the parental of the birth parents, including voluntary relinquishment, involuntary termination, or confirmation of consent;
- (4) A statement of any further proceedings pending in the adoption; and
- (5) The certification from the Pennsylvania Department of Vital Statistics pursuant to 23 Pa.C.S.A. § 5103 showing that no claim of paternity has been filed.

(b) Procedure.

- (1) Upon presentation of a Petition to Terminate putative father's rights under 23 Pa.C.S.A. §§ 2503(d) or 2504(c), the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after the filing of the petition.
- (2) Notice shall be provided in the form provided in 23 Pa.C.S.A. § 2513(b), and service shall be as provided in State Rule 15.6.
- (3) Notice shall be given to the birth parents and putative father, and to the parents or guardians of a birth parent or putative father who has not reached age 18.
- (4) Following hearing, the Court shall issue such decree as clearly sets forth that the parental rights of the putative father are terminated.
- (5) A Petition to Terminate Putative Father's Rights may be brought in the name of the attorney for the adopting parents.

15.5.1 Petition to Confirm Consent to Adoption, including Stepparent adoptions.

All written consents to adoption must be confirmed by Court prior to the entry of a final Adoption Decree.

(a) Form of Petition. Contents. The Petition to Confirm Consent shall include the following:

- (1) The names and addresses of the petitioners;
- (2) The names and addresses of the birth parents;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date the consent to adoption was signed by the birth parent or parents. The original consent shall be attached to the petition or shall be part of prior pleadings; and
- (4) A statement of any further proceedings pending in the adoption.

(b) Procedure.

- (1) The Petition to Confirm Consent shall be presented to the Family/Orphans Court Administrator to schedule a hearing. The hearing shall be scheduled not less than ten (10) days after the filing of the petition and not less than sixty (60) days after the filing of the consent to adoption, whichever is later.
- (2) Notice shall be in the form provided in 23 Pa. C.S.A. Section 2513(b), and service shall be as provided in State Rule 15.6. Notice shall be given to the birth parents and putative father, if applicable, and to the parents or guardians of a consenting parent who has not reached age 18.
- (3) Following hearing, the Court shall issue such decree as clearly sets forth that the consent to adoption is confirmed and that all rights of the consenting birth parent are terminated.
- (4) A Petition to Confirm Consent may be brought in the name of the attorney for adopting parents.
- (5) The Adoption petition shall be filed separately from Petition to Confirm Consent, Petition for Voluntary Relinquishment, or Petition for Involuntary Termination of Parent Rights, and may be filed simultaneously with any aforesaid Petition.

(c) Hearing.

At the hearing to confirm the consent the petitioner shall present such information as may be necessary to allow the court to review the circumstances of the execution and the submission of all written consents to adoption so as to determine their validity. The court shall then enter an order confirming or rejecting the written consent to adoption.

IN RE: : IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA
: ORPHANS' COURT DIVISION
INSPECTION OF :
GESTATIONAL CARRIER FILES _ NO. AO

ADMINISTRATIVE ORDER

AND NOW, to wit, this 16th day of September 2008, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Clerk of the Orphans' Court of Erie County shall prohibit public inspections of all gestational carrier files except upon Petition and Order of Court granted for cause shown.

BY THE COURT:

/s/ Elizabeth K. Kelly
Elizabeth K. Kelly, President Judge

/s/ John J. Trucilla
John J. Trucilla, Administrative Judge of the
Family/Orphans' Court

cc: Raymond Pagliari, Orphans' Court Committee

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