

LOCAL RULES
ORPHANS' COURT DIVISION

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**L.O.C. RULE 1
PRELIMINARY RULES**

L.O.C. Rule 1.1.1. Short Title and Citation

These Rules shall be known as the Local Orphans' Court Rules of the 37th Judicial District, shall be referred to individually herein as "Rule", and cited as "L.O.C. Rule _____." The elected officer of Warren County and Forest County shall constitute the Clerk of that Court.

L.O.C. Rule 1.3.1 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 Courthouse is closed.
- (b) "**Clerk**" means the Clerk of Orphans' Court of Warren County or Forest County.
- (c) "**Common Pleas**" means the Court of Common Pleas of Warren County or Forest County.
- (d) "**Exceptions**" means a formal, written objection to an appraisal or a report of an Auditor or Master appointed by the Court.
- (e) "**Objections**" means written objections to actions of a fiduciary.
- (f) "**L.O.C. Rule**" means the Local Orphans' Court Rules of the 37th Judicial District.
- (g) "**Pa. O.C. Rule**" means the Pennsylvania Supreme Court Orphans' Court Rules.
- (h) "**PEF Code**" means 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.
- (i) "**Register**" means the Register of Wills of Warren County or Forest County with jurisdiction or authority to probate wills and grant letters as provided by 20 Pa.C.S.A. §901.

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L.O.C. Rule 1.5.1 Local Rules. Argument.

Matters requiring argument shall be scheduled and heard in the manner set forth by the Court Administrator.

All motions shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion or, in routine motions that do not raise complex legal or actual issues, in the body of the motion itself.

L.O.C. Rule 1.5.2 Local Rules. Attorneys.

- (a) **Attorneys 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 the attorney's 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 from the Court. The Clerk shall report to the Court any failure to comply with this order.

L.O.C. Rule 1.5.3 Local Rules. 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 by the Clerk.
- (b) **Bond without Surety.** The Court may permit interested parties 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 by the Orphans' Court; provided, that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing the surety's 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.

L.O.C. Rule 1.5.4 Local Rules. Legal Periodical.

The *Warren Times Observer* is the legal periodical for the publication of legal notices in Warren County. *The Forest Press* is the legal periodical for the publication of legal notices in Forest County.

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L.O.C. Rule 1.5.5 Local Rules. 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.

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**L.O.C. RULE 2
ACCOUNTS, OBJECTIONS, AND DISTRIBUTIONS**

**L.O.C. Rule 2.4.1 Petition for Adjudication/Statement of Proposed Distribution;
Virtual Representation. Additional Requirements.**

- (a) A Proposed Decree of Distribution, which will confirm the Account and approve the Petition for Adjudication/Statement of Proposed Distribution, shall accompany the papers filed pursuant to Pa. O.C. Rule 2.4.

L.O.C. Rule 2.5.1 Notice of Account Filing. Interested Parties.

In addition to the requirements of the Pa. O.C. Rules, the notice to interested parties shall:

- (a) State the date on which the Account will be presented to the Court for confirmation.

L.O.C. Rule 2.6.1 Filing with the Clerk.

- (a) All Accounts and Statements of Proposed Distribution must be filed with the Clerk of the Orphans' Court no later than thirty (30) days before the regularly scheduled confirmation date published in the annual Court Calendar upon which the accountant desires to have the Account and/or Statement of Proposed Distribution submitted to the Court for approval.
- (b) The Clerk shall give notice by advertisement of the time when Accounts were filed and when they will be presented to the Court for confirmation. The advertisement shall include the names and capacity of respective accountants and shall also state that unless objections are filed with twenty (20) days after confirmation, the confirmation will be confirmed and distribution may be made in accordance with any Statement of Proposed Distribution filed with the Account.

**L.O.C. Rule 2.6.2 Filing with the Clerk. Accounts of Personal Representatives to be
Filed in Duplicate.**

Accounts of personal representatives shall be filed with the Clerk in duplicate. Following confirmation, one copy of the Accounts of personal representatives, with the date of confirmation noted thereon, shall be forwarded to the Register for indexing and filing with records of the proceeding in the Register's Office for that decedent.

L.O.C. Rule 2.9.1 Confirmation of Accounts; Awards. Time for Filing.

All Accounts presented to the Court of Executors, Administrators, Guardians, or Trustees shall be filed with the Clerk on or before the Friday preceding the first Monday of the months of January, April, July, and October of each year.

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Upon the first Wednesday of February, May, August, and November of each year, accounts of Executors, Administrators, Guardians, and Trustees shall be presented to the Court at 9:00 a.m. for confirmation.

L.O.C. Rule 2.9.2 Confirmation of Accounts; Awards. Certification. Real Estate Distributed in Kind.

When distribution of real estate in kind is awarded pursuant to a Statement of Proposed Distribution, the Clerk, following confirmation and at the request of any interested party, shall excerpt those portions of the decree affecting title to real estate and certify the same for recording in the office of the Record of Deeds of the county in which such real estate is situated.

L.O.C. Rule 2.11.1 Appointment of Official Examiners. Written Report.

The Court may appoint by special order an official examiner(s) who shall examine the assets held by any fiduciary and make a 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.

L.O.C. Rule 2.11.2 Appointment of Official Examiners. Special Duties.

The Court may, in any order appointing an examiner(s), also request the examiner(s) 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.
- (d) Such other matters as the Court may designate.

L.O.C. Rule 2.11.3 Appointment of Official Examiners. Compensation.

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

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L.O.C. RULE 3
PETITION PRACTICE AND PLEADING

L.O.C. Rule 3.9.1 Preliminary Objections. Failure to File.

If a pleading is not endorsed with a Notice to Plead, the Respondent cannot be penalized for failing to file a responsive pleading. When a Notice to Plead is affixed on the Preliminary Objections, then the failure to answer the Preliminary Objections may result in the averments of facts being deemed admitted.

L.O.C. RULE 5
RULES GOVERNING SPECIFIC TYPES OF PETITIONS

L.O.C. Rules 5.2.1 Family Exemption. Additional Requirements.

- (a) **Additional Contents of Petition.** In addition to the matters required by Pa. O.C. Rule 12.1, a petition for the family exemption shall also set forth:
- (b) **When Appraisal Unnecessary.** Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed from:
- (1) Cash or from stocks, bonds, securities, or other choices in action which have an immediate determinable market value; or
 - (2) Real estate or personal property, the value of which is agreed to by all parties in interest that are *sui juris*, or if not *sui juris*, the fiduciaries for such *non-sui juris* individuals.

In all other cases, an appraisal shall be necessary, unless specifically excused by the Court.

(c) Procedure for Appraisal.

- (1) If an appraisal is necessary, the Court shall appoint two appraisers in accordance with PEF Code §3123. After appointment, the appraiser shall file with the Clerk their appraisal within thirty (30) days of appointment. A copy of the appraisal shall be served by the appraisers on the personal representatives, or, if there is no personal representative, then as the Court shall direct. Such person shall immediately give notice to all interested parties who would be adversely affected by the allowance of the exemption. Interested parties shall have twenty (20) days from the date of notice to file objections with the Court. If objections are filed, the matter shall be referred to the Court for further disposition.
- (2) The notice shall contain a copy of the petition and the appraisal, and a statement that confirmation of the appraisal and the setting apart of the real estate to the next of kin will be requested and may be allowed by the Court at a stated time, and unless exceptions are filed thereto, confirmed twenty (20) days thereafter. Said notice shall be given not less than twenty (20) days prior to the date set for confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.
- (3) **Confirmation and Setting Apart Allowance.** Unless exceptions are filed to the confirmation, the appraisal and award of real estate shall be confirmed by the Clerk without further Order of the Court.

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- (4) **Exceptions.** Exceptions to an appraisal shall be filed with the Clerk within twenty (20) days after confirmation. Copies of the exceptions shall be served on the fiduciary, if any, and on the spouse or the attorney for the spouse, within five (5) days after filing. If exceptions are filed, the matter may be placed on the argument list in accordance with the Local Rules of Civil Procedure of the 37th Judicial District.

L.O.C. Rule 5.2.2 Family Exception. Voluntary Distribution.

When the personal representative, at his/her own risk delivers assets of the estate in satisfaction of the exemption, he/she shall set forth the same as a credit in the account. The same may be the subject of objection by any claimant or interested party.

L.O.C. Rule 5.3.1 Intestate Share to Surviving Spouse from Real Estate. Conclusiveness of Averments.

If the averments of the petition are contested by any interested party as to the right of the surviving spouse to the allowance being claimed, the matter may be referred to an auditor, or to a Hearing Judge.

L.O.C. Rule 5.3.2 Intestate Share to Surviving Spouse from Real Estate. Appraisal. Notice. Practice and Procedure.

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

L.O.C. Rule 5.4.1 Revocation, Vacating, and Extension of Time for Filing of Surviving Spouse's Election. Form. Timing.

- (a) A petition for extension of time in which the surviving spouse may file an election to take against the Will or other conveyances shall be in paragraph form alleging facts relied upon to justify the extension.
- (b) The petition shall be filed with the Clerk and petitioner shall give at least twenty (20) days written notice of intention to request the extension to all persons adversely affected thereby who do not join in the prayer of the petition.

L.O.C. Rule 5.8.1 Discharge of Fiduciary and Surety. Additional Provisions.

- (a) **Affidavit or Verification.** The affidavit or verified statement to the petition shall include an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent.

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If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notice by citation or otherwise.

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

- (c) **Discharge of a Personal Representative.** When the value of the gross real and personal estate of a decedent does not exceed the value of the statutory limitation, the personal representative, after the expiration of one (1) year from the first complete advertisements of the grant of letters, may present a petition to the Court with an account attached under the provisions of the PEF Code §3531 (20 Pa. C.S.A. §3531). The petition shall conform as far as practicable to the requirements of a petition under Pa. O.C. Rule 5.8.

L.O.C. Rule 5.10.1 Public Sale of Real Property. Contents of Petition. Additional Requirements.

- (a) **Personal Representative.** A petition by a personal representative to sell real property at public sale, under PEF Code §3353, 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 interested parties, a brief description of their respective interests, whether any of them are minors, adjudicated incapacitated, or deceased, or, 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 if applicable and current common level ratio value.

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- (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 PEF Code §7792 shall also set forth in separate paragraphs:
- (1) How title was acquired, starting with the date and place of probate of the Will or recording of the deed.
 - (2) A recital of the relevant provision 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 interested parties; 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, if applicable, and current common level ratio value.
 - (5) That the Trustee is not otherwise authorized to sell by the PEF Code or is denied the power by the truest instrument or that it is advisable that the sale have the effect of a judicial sale, state the reason.
 - (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 PEF Code §5144 or §5155, 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 the 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 the third persons in the real property.

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- (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 ration value.
- (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 PEF Code §5521, 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 to Court to determine that the proposed sale will be in the best interest of the incapacitated person.

L.O.C. Rule 5.10.2 Public Sale of Real Property. 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 twenty (20) business days' notice has been given to those parties who do not consent or join.
- (b) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

L.O.C. Rule 5.10.3 Public Sale of Real Property. Notice.

After allowance of a petition for public sale of real estate, the petitioner shall, in addition to such notice as may be required to be given by law, give notice of the sale to each interested party, including every unpaid creditor by first class mail, if known. Such notice shall be given at least twenty (20) days prior to the date of the proposed sale. In addition, notice of the sale shall be advertised one (1) time in a newspaper of general circulation in the appropriate county and such notice shall contain:

- (a) The size of the property, either by acreage or square feet, if known, as well as the street or road location, and reference to any landmarks that may identify the property.
- (b) A list of all improvements on the property and the nature thereof.
- (c) A deed description or surveyor's description of the property, if any.
- (d) The name of the grantee of the last recorded deed of the subject premises, together with the Deed Book and page of the record.
- (e) The recorded liens thereon and the identity of the secured party.

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L.O.C. Rule 5.10.4 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 Pa. O.C. Rule 3.6.
- (b) **Confirmation.** If no objection is filed, the Court may enter a decree confirming the sale upon submission of a return of sale.

L.O.C. Rule 5.10.5 Public Sale of Real Property. 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.

L.O.C. Rule 5.11.1 Private Sale of Real Property or Options Thereof. Contents of Petition. Additional Requirements.

Where the power to sell real property is not granted by will, trust instrument, or statute, a petition by a 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 by the fiduciary.

L.O.C. Rule 5.11.2 Private Sale of Real Property or Options Thereof. Exhibits.

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 twenty (20) days' notice has been given to those parties who do not consent or join.
- (b) A copy of the agreement of sale.
- (c) Affidavits in the form required by Pa. O.C. Rule 5.10(b), unless otherwise ordered by the Court.

L.O.C. Rule 5.11.3 Private Sale of Real Property or Options Thereof. 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 may excuse the fiduciary from entering additional security.

L.O.C. Rule 5.11.4 Private Sale of Real Property or Options Thereof. Petition to Fix or Waive Additional Security. Personal Representatives.

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- (a) **Form of Petition.** In a sale of real estate, whether public or private, 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(s) filed by the petitioner, the date of such filing, and the name(s) of the surety.
 - (4) The total valuation of the personal estate as shown on 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(s) of the purchaser(s), 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, judgements, etc., and the names and relationships of all interested parties with a brief description of their respective interests.
 - (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.

L.O.C. Rule 5.50.1 Settlement of Small Estates by Petition.

- (a) **Applicability.** This rule applies to all petitions filed pursuant to 20 Pa. C.S. §3102, pertaining to settlement of small estates by petition and Pa. O.C. Rule 5.50 regarding settlement of small estate petitions.
- (b) **Contents.** In addition to the requirements provided by the Rules in Chapter III, a petition shall set forth the following:
- (1) The date 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, the amount.
 - (2) A brief description of any beneficiaries' respective interests and whether any of them has received or retained any property of the decedent by payment of wages under PEF Code §3101.
- (c) **Exhibits.** The following items shall be attached as exhibits to the petition:

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- (1) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least twenty (20) business days prior to presentation of the petition.
- (d) **Notice.** The petitioner shall serve written notice on interested parties in compliance with Chapter III.
- (1) That twenty (20) 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, and to every unpaid claimant or creditor.

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**L.O.C. RULE 7
RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE**

L.O.C. Rule 7.1.1 Depositions, Discovery, Production of Documents, and Perpetuation of Testimony. Case Management.

- (a) For all Orphans' Court cases, the Court shall issue a Case Management Order after the close of the pleadings. This Case Management Order shall set dates certain for the completion of discovery, the filing of all pre-trial motions, a pre-trial conference, and jury selection, where demanded.

- (b) If any party determines that the complexity of the case will require an expanded schedule, that party shall notify the Court Administrator within ten (10) days of the entry of the Case Management Order to request a scheduling conference. It shall be the responsibility of the party requesting a scheduling conference to notify all counsel and any parties proceeding pro se, of the date, time, and a place of the scheduling conference.

- (c) Pro Se Filings.**
 - (1) The Prothonotary shall forward a copy of all documents filed by individuals who are represented by counsel of record to that attorney.

 - (2) Filings that are not in compliance with the law, rule of Court, or the appropriate fee schedule, shall be duly noted and forwarded immediately to the office of the Court Administrator. The Court Administrator, after consulting with the Court, shall notify the individual of the deficiency in the filing.

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L.O.C. RULE 9
AUDITORS AND MASTERS

L.O.C. Rule 9.1.1 Notice of Hearings. Local Rules.

- (a) The Auditor or Master shall fix a date, time, and place for hearing and shall give written notice to the accountant or petitioner and interested parties or their counsel of record of the hearing by first class mail at least twenty (20) days prior thereto. In the event notice cannot be given in such manner, notice shall be given by advertisement one time in the *Warren Times Observer* for Warren County and *The Forest Press* for Forest County and one time in a newspaper of general circulation in the county where the decedent resided. The date of publication shall be at least twenty (20) days prior to the hearing.
- (b) The notice shall include the following:
 - (1) The caption and number of the case;
 - (2) The fact and date of appointment;
 - (3) The name of the fiduciary of the estate;
 - (4) The time and place of hearing;
 - (5) A general statement of the matters to be determined; and
 - (6) The signature and the typewritten name, address, and telephone number of the Auditor or Master.

L.O.C. Rule 9.1.2 Notice of Hearings. Appointment.

- (a) **Auditors and Masters.** A Master may be appointed by the Court on its own motion, upon the petition of the accountant, or of any interested party.
- (b) Auditors and Masters shall be members of the Bar of this Court.
- (c) The appointed official shall regulate all of the proceedings before him/her in accordance with the rules of law and evidence in the Commonwealth and shall have the authority to administer an oath before testimony.
- (d) The hearings may be continued or adjourned for cause shown or upon agreement of all parties present, but each continuance or adjournment shall be to a day certain, not more than thirty (30) days later.

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- (e) The official shall have the authority to issue subpoenas and/or subpoenas *duces tecum* for all witnesses to appear and testify.
- (f) The official shall have the authority to retain experts in any given field to assist the official in the performance of the appointed duties. The cost of same shall be imposed upon either the estate or as the official shall determine is just and proper.
- (g) The official shall cause a stenographic record to be made of all hearings prepared by an official Court Reporter. Examination of witnesses shall be conducted by counsel, if any, or by the respective parties or by the official as the official may determine in the absence of counsel. If a witness or a question is objected to, or if any documentary or other evidence is objected to, the offer and purpose of such testimony shall be made a matter of record as well as the objection and the ground for said objection and the official's ruling thereon. If the official sustains the objection, the official shall nonetheless permit the question and answer to be made of record so that the same may be preserved for subsequent ruling by the Court in the event exceptions are taken to the report.
- (h) At the conclusion of the hearing, any party who had entered a formal appearance may submit proposed findings of fact, conclusions of law, and/or briefs for the purposes of aiding or guiding the official; provided, however, that copies of such submissions shall be delivered or mailed to each person who has appeared in the proceedings in person or by counsel.

L.O.C. Rule 9.6.1 Notice of Filing Report. Exceptions.

- (a) The Auditor or Master shall notify all parties of the filing of the report, furnish all parties with a copy thereof and a return of notice shall be filed.
- (b) Any interested party shall have the right to file exceptions to an Auditor's or Master's report within twenty (20) days after the date of service upon that party.
- (c) The official shall file the report within ninety (90) days of the appointment provided that an extension will be permitted by the Court upon application of the official for good cause shown in complicated cases. Should the official fail to file the report within the time limits or extensions herein, the appointment may be vacated and compensation and reimbursement for services rendered or expenses incurred may be denied.
- (d) Upon completion of the report, the official shall file it in the office of the Clerk and shall give notice in writing that the report has been filed to counsel for all parties who appear formally during the proceedings and to such parties as appear without counsel. Said notice shall inform all parties that unless exceptions are filed within twenty (20) days from the date of the filing of the report, it will be presented to the Court for confirmation.

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- (e) Exceptions filed must point specifically to the error of fact or law complained of and state clearly the grounds for the objections thereto in separate paragraph form, with one issue raised in each paragraph. General, vague, or argumentative exceptions will not be considered. Where the exception is of the nature that the official failed to find a fact, the exception shall state the nature of the fact the official should have found and shall give reason to support it from the record and shall specifically identify the fact not found in the record.
- (f) Any party filing exceptions to the report shall, by ordinary mail, serve a copy thereof upon the official and all counsel or parties without counsel who have appeared formally in the proceedings.
- (g) In the event exceptions are filed, the Clerk shall forthwith transmit the proceedings to the Court Administrator for further scheduling for a hearing or argument as the Court may determine. No exceptions will be heard that are not timely filed. The Court may, in its discretion, remand the report to the Auditor for further proceedings if appropriate.
- (h) The official shall verify in the report that written notice has been given to counsel of record who have filed a formal appearance in the proceedings and to such other parties as have appeared without counsel.

L.O.C. Rule 9.7.1 Confirmation of Report.

- (a) If no exceptions are filed to the official's report within twenty (20) days of the date of filing, the Clerk shall transmit the report to the Court for confirmation. Once confirmed, the Statement of Proposed Distribution found in the auditor's report shall become the Decree of Distribution.
- (b) If exceptions are filed to the official's report, the Court shall hear the exceptions *de novo* or upon argument as may be appropriate, depending on the nature of the exception and either:
 - (1) Confirm the official's report, whereupon the Statement of Proposed Distribution found in the Auditor's report shall become the Decree of Distribution; or
 - (2) If the official has made an error of law or an abuse of discretion, modify the report and enter an appropriate Decree of Distribution.
- (c) The Court's decree in disposition of exceptions to the official's report shall be confirmed if there are no exceptions thereto.

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L.O.C. Rule 9.8.1 Security for Expenses and Fees. Confirmation. Auditor's and Master's Expenses and Fees.

No confirmation or decree shall be confirmed by the Clerk until all expenses and Auditor's or Master's fees have been paid to the Clerk. Upon confirmation, the Clerk shall pay all expenses and the balance of the Auditor's or Master's fee to the Auditor or Master. See 20 Pa. C.S.A. §752.

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L.O.C. RULE 10
REGISTER OF WILLS

L.O.C. Rule 10.4.2 Appeals from the Register of Wills. Petition.

- (a) Appeals taken from a judicial act or proceedings before the Register of Wills shall be addressed to the Orphans' Court with the appropriate caption. The appeal shall be in petition form.
- (b) The petition shall set forth:
 - (1) The caption;
 - (2) A heading briefly indicating the purpose of the petition;
 - (3) The nature of the proceedings before the Register;
 - (4) A copy of any Will or instrument in controversy;
 - (5) A statement of the facts and circumstances upon which appellant relies;
 - (6) A precise statement of the questions of law or fact involved;
 - (7) The names and addresses of all interested parties; and
 - (8) A prayer for relief desired.
- (c) When an Appeal Petition has been filed with the Court, the Register shall cause the record to be certified to the Court and properly docketed with the Orphans' Court. When an appeal has been perfected from a judicial act or proceeding before the Register and the record has been certified as provided, a citation shall issue as of course, without petition executed by the Court, directed to all persons named in the appeal to show cause why the appeal should not be sustained and the decision complained of set aside. Said citation shall contain a date and time certain for hearing on the appeal.

L.O.C. Rule 10.4.3 Appeals from the Register of Wills. Bond.

If the Court requires that a bond be furnished, the appellant shall file a bond and secure its approval by the Register of Wills. If the bond is not presented within the time indicated by the Court, the Clerk, upon praecipe of the appellee(s), shall order a judgment of *non pros*.

L.O.C. Rule 10.4.4 Appeals from the Register of Wills. Jury Trial.

A party or person entitled to and desiring a trial by jury shall make timely demand thereof in accordance with PEF Code §777(c).

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L.O.C. Rule 10.4.5 Appeals from the Register of Wills. Subpoenas.

Subpoenas, with or without a clause of *duces tecum*, shall be issued by the Clerk.

**L.O.C. RULE 14
GUARDIANSHIPS OF INCAPACITATED PERSONS**

L.O.C. Rule 14.2.1 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person. Local Rules.

- (a) A petition to adjudicate a persona incapacitated and to appoint a guardian shall set forth:
- (1) All matters required by Pa. O.C. Rule 14.2;
 - (2) Whether the petition seeks limited or plenary guardianship and what powers are sought for a limited guardian;
 - (3) Whether the proposed guardian wishes approval of any initial expenditures of funds at the hearing;
 - (4) Whether the alleged incapacitated person executed a durable Power of Attorney and the name and current address of the attorney in fact;
 - (5) Whether the alleged incapacitated person executed a Will or other testamentary document and the location of the original document;
 - (6) Whether the alleged incapacitated person executed a Living Will, Advance Health Care Directive, or similar document and the location of the original document;
 - (7) The name of the attorney who has represented the person in the recent past; and
 - (8) Where appropriate, state therein the name of the proposed guardian and the relationship, if any, to the alleged incapacitated person, any fee arrangements and costs to be paid, the proposed fiduciary, and any interest the proposed fiduciary may have to the incapacitated person's estate, if any.

L.O.C. Rule 14.2.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person. Hearing.

The Court shall fix a date for hearing which shall not be less than twenty (20) days after the service of the petition and citation.

The petition shall comply with all of the mandates of Pa. O.C. Rule 14.2; however, if it is alleged that the alleged incapacitated person is unable to attend court, the petitioner, at the time

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of hearing, must make a part of the record a physician's report dated within twenty (20) days of the hearing that the physician has examined the alleged incapacitated person and in the medical opinion of the physician, attending would be harmful to the alleged incapacitated person.

At the hearing, the Court shall determine the amount, if any, of a bond to be placed by the fiduciary with the Court and the nature thereof.

L.O.C. Rule 14.2.3 Petition for Adjudication of Incapacity and Appointment of Guardian of the Person or Estate of an Incapacitated Person. Qualifications of the Guardian.

The class of persons from which a guardian may be appointed shall be as set forth at 20 Pa. C.S.A. §5511(f).

L.O.C. Rule 14.9.1 Review Hearing. Petition.

A petition to adjudicate whether there has been any significant change in the capacity of a person who was formerly adjudicated to be incapacitated shall set forth:

- (a) All matters required by Pa. O.C. Rule 14.3;
- (b) The name and location of the court which adjudicated incapacity; and
- (c) Whether the former incapacitated person is capable of conducting his/her own affairs.

The petitioner may be the incapacitated person, guardian, spouse of the incapacitated person, relative, creditor, debtor, or any person interested in the welfare of the incapacitated person.

L.O.C. Rule 14.9.2 Review Hearing. Hearing.

A hearing shall be set by the Court not less than twenty (20) days after service of the petition and notice of the hearing.

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**L.O.C. RULE 15
ADOPTIONS**

L.O.C. Rule 15.1.1 Local Rules. Practice and Procedure.

- (a) All papers in adoption matters, including petitions for voluntary and involuntary relinquishment, shall be filed with the Clerk who shall thereafter submit the appropriate Order to the Court Administrator to fix a hearing date on the proceedings.
- (b) All adoption petitions shall be filed with the Clerk forty-five (45) days prior to the scheduled hearing date.
- (c) No petition for adoption shall be presented by the Clerk for hearing if it does not have all mandatory information, abuse of children record, or other required information.

Note: See 23 Pa. C.S. §2530 as to requirements for Home Study and Pre-Placement Report; see also 23 Pa. C.S. §2531 as to requirements for Report of Intention to Adopt; see also 23 Pa. C.S. §2711 as to requirements for Consents Necessary to Adoption. Notice does not need to be provided to any parent whose parental rights have been terminated by petition to confirm adoption. See 23 Pa. C.S. §2535, §2724, and §2533.

- (d) At the time of hearing, counsel shall attach a copy of all costs, counsel fees, and any other expenses incurred to be paid by the adopters.
- (e) The adoptee(s) shall be available for Court review at the time of adoption.

L.O.C. Rule 15.1.2 Local Rules. Waiver.

Any waiver by a parent of the right to notice of hearing shall be in writing and shall include both a waiver of the right to notice of hearing and a waiver of the right to appear at the hearing.

L.O.C. Rule 15.3.1 Adoption.

A petition for adoption shall have a proposed Preliminary Order scheduling the adoption hearing attached thereto. At the time of the hearing, the attorney for petitioner shall submit a Proposed Decree of Adoption to the Court.

L.O.C. Rule 15.4.1 Involuntary Termination of Parental Rights. Final Decree.

At the conclusion of the hearing, under Pa. O.C. Rule 15.4, the Court may enter a Final Decree.

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L.O.C. Rule 15.5.1 Notice to Persons; Method; Notice of Orphans' Court Proceedings Filed on Dependency Docket. Time.

- (a) In proceedings under Pa. O.C. Rule 15.4, the attorney for petitioners shall make a good faith effort to determine the address and identity of each parent and to provide notice of the proceedings. In adoption proceedings under Pa. O.C. Rule 15.5, notice of the proceedings shall also be given to any person(s) who have custody pursuant to a valid Court Order.
- (b) Notice of the Involuntary Termination Petition and hearing shall be served on the natural or putative father whose identity and/or whereabouts cannot be ascertained or on the mother whose identity and/or whereabouts cannot be ascertained 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) A Motion for Service by Publication upon a natural or putative father must aver that the natural mother does not know the identity and/or whereabouts of the natural or putative father. This Motion must include his last known address, if known, and must also specify all attempts made by the petitioner to determine the correct identity and/or address of the natural or putative father. *See also* 23 Pa. C.S.A. §2512(c).
- (d) Publication shall include, at a minimum, the contents of the Notice required by 23 Pa. C.S.A. §2513(b). Proof of publication shall be submitted to the Court prior to hearing.