

**ACKNOWLEDGMENT**

The following individuals are credited for their efforts in the complete revision of the Westmoreland County Orphans' Court Rules in 1995:

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

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

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*Gilfert M. Mihalich,  
Orphans' Court Judge*

**2017 ACKNOWLEDGMENT**

On September 1, 2016, the Pennsylvania Supreme Court rescinded existing state Orphans' Court Rules, replacing them with new rules which became effective that same date. Judicial districts were directed to review their local rules and submit any necessary proposed local rules for review by the Pennsylvania Orphans' Court Procedural Rules Committee. The new rules standardized filing practices, and modeled orphans' court proceedings with general civil practice, where it was beneficial to do so.

Thanks and credit for their contributions to the 2017 local Orphans' Court Rules is hereby extended to the following:

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Anthony G. Marsili, Orphans' Court Judge  
Chris Scherer, Orphans' Court Judge

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**WESTMORELAND COUNTY ORPHANS' COURT RULES**

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**RULE W01.6                    MEDIATION**

All interested parties in a matter may use mediation to resolve issues pending before the court, and, upon either partial or complete resolution, may petition the court to approve the agreement of all interested parties as an order or decree of the court.

- (a) The interested parties may engage the services of a mediator, either prior to or after any interested party has filed a pleading before the court, including an account filed by a fiduciary for audit.
- (b) All the interested parties in a matter docketed before the court may request to engage in mediation at any time during the pendency of the matter.
- (c) In such request for mediation, all interested parties shall identify:
  - (1) the proposed mediator and the proposed source of payment of fees and costs of the mediator;
  - (2) names and contact information of all interested parties and any counsel who shall participate in the mediation;
  - (3) names and information regarding any interested parties having diminished capacity or a legal disability, whose interests must be adequately protected; and
  - (4) the scheduled date for the initial mediation conference.
- (d) All interested parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.
- (e) Mediation shall not delay the required filing of any pleading or ordered return dates, or the scheduling of court hearings, unless specifically requested by joinder of the interested parties and so ordered by the court.
- (f) Upon completion of mediation, all interested parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the court.
- (g) The interested parties may request that the court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The court may grant approval in an order or decree. Alternatively, the court may recommend any changes that the court deems appropriate for approval. The parties to the mediation may accept the court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE WO1.8                    COVER SHEET**

The first pleading to be filed by each party in each case shall be accompanied by a cover sheet, which shall be in the form set out in the forms section of the Westmoreland County Orphans' Court Local Rules, appended hereto.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE WO1.9                    BILL OF COSTS**

- (a) The following items shall be considered as record costs in a proceeding:
  - (1) fees paid for filing pleadings;
  - (2) fees paid for service of pleadings;
  - (3) any other costs specifically permitted by statute or Supreme Court rules; and
  - (4) if the case has been tried, fees statutorily permitted to witnesses for per diem attendance and mileage.
- (b) A bill of costs must be filed with the Clerk of the Orphans' Court, along with an affidavit of service on the opposing party or his counsel of record, within ten (10) days of the entry of a verdict by a jury, or a final order or decree by the court. The bill of costs may include the items listed in paragraph (a) of this rule.
- (c) In cases where an executor, administrator, guardian or trustee has acted in good faith defending the estate against a claim, costs and fees may be allowed out of the estate, even though the claim is allowed.
- (d) Objections specifying those items or amounts of costs to which a party has objections must be filed within ten (10) days of receipt of the bill of costs.
- (e) The court will enter an order specifying allowable costs.

Adopted February 1, 1996, effective May 1, 1996. Rule WO110 renumbered April 6, 2017, effective May 29, 2017. Paragraph (c) is taken from the former Rule WO9(c). The remaining paragraphs are taken from Rule W609 of the Westmoreland County Rules of Civil Procedure.

**RULE WO1.10                    CHANGE OF ADDRESS**

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

Adopted February 1, 1996, effective May 1, 1996. Rule WO118 renumbered April 6, 2017, effective May 29, 2017.



**RULE WO2.5 NOTICE OF ACCOUNT FILING - COPIES OF ACCOUNT SENT WITH NOTICE**

Any copy of the account served pursuant to Pa. O.C. Rule 2.5 may be sent as a double-sided copy. Upon consent of the parties, a copy of account may be sent on a properly labeled compact disk or on a flash drive in portable document format.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE WO2.6 AUDIT LIST**

The President Judge shall decree and the Clerk of the Orphans' Court shall publish in the Westmoreland Law Journal for three consecutive weeks commencing the second week of November a list of dates of audit and the schedule of filing periods as related to the audit dates for the following year.

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

Revised February 12, 1998, effective March 30, 1998. Rule WO102(c) renumbered April 6, 2017, effective May 29, 2017.

**RULE WO3.7 RETURN DAYS**

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

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

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

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

Rule WO102(1) renumbered, April 6, 2017, effective May 29, 2017.

**RULE W03.9                      PRELIMINARY OBJECTIONS - BRIEFS**

- (a) Filing and service of brief in support of preliminary objections.
  - (1) A respondent who files preliminary objections shall file a brief with the Clerk of the Orphans' Court within thirty (30) days of filing the pleading if the preliminary objections only set forth grounds under subparagraphs (2), (3) or (4) of Pa. O.C. Rule 3.9(b). Parties filing preliminary objections raising any ground other than under subparagraphs (2), (3) or (4) of Pa. O.C. Rule 3.9(b) shall file a brief within sixty (60) days of filing the preliminary objections, unless the court, on motion of any party, sets a briefing schedule to accommodate depositions or a hearing pursuant to Pa. O.C. Rule 3.9(d)(2).
  - (2) A respondent who files preliminary objections shall serve a copy of the brief on every interested party or attorney of record on the same day it is filed. A copy of the brief, a certificate of service, together with a copy of any subsequent pleadings filed, shall be mailed or delivered to the chambers of the judge assigned to the case.
- (b) Filing and service of brief in opposition to preliminary objections
  - (1) A party to whom preliminary objections are directed shall file a brief in opposition with the Clerk of the Orphans' Court within thirty (30) days of being served with the respondent's brief.
  - (2) Within three (3) days of filing the brief in opposition, a party to whom preliminary objections are directed shall serve a copy of the brief on every interested party or attorney of record, and shall file a certificate of service with the Clerk of the Orphans' Court.
  - (3) A party to whom the preliminary objections are directed shall deliver or mail a copy of the brief, along with a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate is filed.
- (c) Oral argument

Oral argument will only be scheduled upon the presentation of a motion in accordance with the motions procedure in Rule W07.5.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE W05.6                      PETITION TO INVADE PRINCIPAL ASSETS (MINOR'S ESTATE)**

A petition to invade principal assets shall be presented to the court in all situations where the guardian intends to invade the principal assets of a minor. Such petition to invade principal assets shall contain, at minimum, the following averments of fact:

- (a) name, age and residence of the minor and the person with whom the minor resides;

- (b) a reference to the original date of the guardian's appointment;
- (c) whether the guardian is bonded and, if so, for what amount;
- (d) names and residences of the living parents and their incomes, and whether their incomes are sufficient to support the minor properly;
- (e) an itemized listing of the assets of the minor;
- (f) an itemized listing of the income of the minor;
- (g) whether there are other funds (e.g., current beneficiary of a trust or estate) available for the care, maintenance, education or funeral expenses of the minor or other persons for whom an invasion of principal is requested;
- (h) a listing of the names and addresses of all creditors, and the amount due each;
- (i) the purpose for the proposed invasion of principal;
- (j) whether any prior petitions to invade principal assets have been presented;
- (k) that the next-of-kin of the minor have been notified of the presentation of the petition for allowance, if directed by the court; and
- (l) the maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary.

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

EXPLANATORY COMMENTS: Under 20 Pa.C.S. § 5164, court approval is required to use income for anyone other than the minor. In such cases, a petition in essentially the same form as provided by this rule should be filed.

Adopted February 1, 1996, effective May 1, 1996. Rule W0503 renumbered April 6, 2017, effective May 29, 2017.

## **RULE W05.16 JURISDICTION**

- (a) The following petitions for approval of settlement shall be brought before the Orphans' Court when suit has not been commenced in the civil division:
  - (1) petition to compromise and settle minor's action;
  - (2) petition to compromise and settle an incapacitated person's action; and
  - (3) petition to compromise and settle wrongful death and survival action.
- (b) Upon receipt of a petition, the court may, at its discretion, grant the petition as presented, request additional information from any party, or order testimony to be taken on the petition.

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0601 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO5.18                    PETITION TO COMPROMISE AND SETTLE MINOR'S CLAIM**

A petition to compromise and settle a minor's claim shall contain, at minimum, the following averments of fact:

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

- (k) A separate petition shall be filed for each minor, and the Clerk of the Orphans' Court shall assign separate file numbers to each such petition.

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

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

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

Adopted February 1, 1996, effective May 1, 1996. Revised December 3, 2003, effective January 19, 2004. Rule WO602 Cross References rescinded November 4, 2005; new Rule WO602 Cross References adopted November 4, 2005, effective December 25, 2005. Rule WO602 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO5.19                    PETITION TO COMPROMISE AND SETTLE INCAPACITATED PERSON’S CLAIM**

A petition to compromise and settle an incapacitated person’s claim shall contain, at minimum, the following averments of fact:

- (a) Description of the factual circumstances of the case. These should include the date of the accident or injury, how the accident or injury occurred, the age of the

incapacitated person at the time of the accident or injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0603 renumbered June 6, 2017, effective May 29, 2017.

**RULE W05.20                    PETITION TO COMPROMISE AND SETTLE WRONGFUL DEATH  
AND SURVIVAL ACTION**

A petition to compromise and settle a wrongful death and survival action shall contain, at minimum, the following averments of fact:

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

Adopted February 1, 1996, effective May 1, 1996. Rule WO604 renumbered June 6, 2017, effective May 29, 2017.

**RULE WO5.21            PETITIONS FOR ALLOWANCE (MINORS SETTLEMENT)**

- (a) All withdrawals from a minor's account require a petition for allowance.

- (b) Petitions for allowance shall contain, at minimum, the following averments of fact:
- (1) the facts and circumstances surrounding the origination of the minor's fund;
  - (2) a chronological statement of all prior petitions for allowance, including the reasons therefor, the amounts thereof, and the disposition;
  - (3) the age of the minor at the time the fund was created and the minor's present age;
  - (4) the original amount of the minor's funds and the present balance of same; and
  - (5) the circumstances and reasons supporting the petition for allowance.
- (c) All petitions for allowance shall be accompanied by:
- (1) a proposed order;
  - (2) a copy of the original petition for compromise and the order of distribution;
  - (3) copies of all prior petitions for allowance and the orders with respect to same; and
  - (4) substantiating documentation to support the petition for allowance.

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

This Rule applies to those situations in which no guardian is appointed. For a situation in which a guardian is appointed, See Rule W05.6.

Adopted February 1, 1996, effective May 1, 1996. Rule W0605 renumbered April 6, 2017, effective May 29, 2017.

**RULE W07.2                      MOTION FOR JUDGMENT ON THE PLEADINGS**

- (a) Requirements for filing and service of a motion for judgment on the pleadings and supporting brief at the office of the Clerk of the Orphans' Court.
- (1) The original motion for judgment on the pleadings shall be filed with the Clerk of the Orphans' Court. A supporting brief is required to be filed with a motion for judgment on the pleadings.
  - (2) A copy of the motion for judgment on the pleadings and a copy of the supporting brief required shall, at the time the motion is filed, be presented or mailed to the chambers of the judge assigned to the case by the party filing the motion. The judge assigned to the case shall prepare a scheduling order for oral argument, direct the filing of the original order, and give or mail a copy of that order to the moving party.



- (3) Within three (3) days of receipt of the scheduling order from the judge assigned to the case, the moving party shall serve copies of the motion for judgment on the pleadings, the scheduling order and the brief on every interested party or attorney of record.
  - (4) The moving party shall file with the Clerk of the Orphans' Court a certificate of service of the motion, scheduling order and the brief. A copy of the certificate of service shall be mailed or delivered to the judge assigned to the case.
- (b) Filing and service requirements for briefs in opposition to the motion for judgment on the pleadings.
- (1) A party to whom a motion for judgment on the pleadings is directed shall file a brief in opposition with the Clerk of the Orphans' Court within thirty (30) days of service of the moving party's motion and brief.
  - (2) Within three (3) days of filing the brief, the party to whom the motion is directed shall serve a copy of the brief on every interested party or attorney of record, and shall file a certificate of service with the Clerk of the Orphans' Court.
  - (3) The party to whom the motion is directed shall deliver or mail a copy of the brief, along with a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate of service is filed.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE W07.3                    MOTION FOR SUMMARY JUDGMENT – BRIEFS**

- (a) Requirements for filing and service of a motion for summary judgment and supporting brief at the office of the Clerk of the Orphans' Court.
  - (1) A party intending to file a motion for summary judgment should note the requirements of Pa.R.C.P. No. 1035.2 (referenced in Pa. O.C. Rule 7.3) that the motion must be made after completion of discovery relevant to the motion, including the production of expert reports, as well as after the relevant pleadings are closed. See the explanatory comments to Pa.R.C.P. No. 1035.2
  - (2) A supporting brief is required to be filed with a motion for summary judgment.
  - (3) A copy of the motion for summary judgment and a copy of the supporting brief required shall, at the time the motion is filed, be presented or mailed to the chambers of the judge assigned to the case by the party intending to file the motion. The judge assigned to the case shall prepare a scheduling order for oral argument, file the original order, and give or mail a copy of that order to the moving party.
  - (4) Within three (3) days of receipt of the scheduling order from the judge assigned to the case, the moving party shall serve copies of the motion for summary judgment, the scheduling order and the brief on every interested party or attorney of record.
  - (5) The moving party shall file with the Clerk of the Orphans' Court a certificate of service of the motion, brief and scheduling order. A copy of the certificate of service shall be mailed or delivered to the judge assigned to the case.
- (b) Filing and service requirements for briefs in opposition to the motion for summary judgment.
  - (1) Within thirty (30) days of service of the moving party's motion and brief, a party to whom a motion for summary judgment is directed shall file a brief in opposition, unless that party has requested and obtained an order of court granting leave to supplement the record pursuant to Pa.R.C.P. No. 1035.3 (incorporated into Pa.O.C. Rule No. 7.3 by reference), in which event the court shall set a briefing schedule. If an order granting such leave is not obtained, there shall be no extension of the thirty (30) day period for filing the brief or continuance of the argument to allow supplementation of the record.
  - (2) Within three (3) days of filing the brief, a party to whom the motion is directed shall serve a copy of the brief on every interested party or attorney of record and shall file a certificate of service with the Clerk of the Orphans' Court.

- (3) A party to whom the motion is directed shall deliver or mail a copy of the brief, the required, specific response filed by that party pursuant to Pa.R.C.P. No. 1035.3 (incorporated into Pa.O.C. Rule 7.3 by reference) and a copy of the certificate of service, to the chambers of the judge assigned to the case on the same day the certificate of service is filed.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE WO7.5                    MOTIONS PRACTICE**

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

CROSS REFERENCES: Motions for Judgment on the Pleadings and Motions for Summary Judgment are governed by WO7.2 and WO7.3 respectively.

Adopted February 1, 1996, effective May 1, 1996. Revised December 3, 2003, effective January 19, 2004. Rule WO107(f) rescinded November 4, 2005; New Rule WO107(f) and Comment adopted November 4, 2005, effective December 25, 2005. Rule WO107(f) amended and renumbered April 6 2017, effective May 29, 2017.

**RULE WO8.2                    MOTIONS FOR RECONSIDERATION**

The moving party shall present a motion for reconsideration to the court on motions day with an attached scheduling order.

Adopted April 6, 2017, Effective May 29, 2017.

**RULE WO10.7                   ISSUANCE OF A SHORT CERTIFICATE AFTER AN ESTATE IS CLOSED**

- (a) For a period of six (6) months after the date of a decree of final distribution, small estates petition or family settlement agreement, the Register of Wills shall issue short certificates to the personal representative or attorney of record for the estate, upon request.
- (b) When more than six (6) months have expired from the date of a decree of final distribution, small estates petition or family settlement agreement, the Register of Wills shall issue short certificates to the personal representative or attorney of record for the estate only after the filing of a praecipe. The praecipe shall be signed by the attorney of record or signed and verified by the personal representative and shall set forth:
  - (1) the caption;
  - (2) the reason for obtaining the short certificates;
  - (3) that all unpaid creditors and heirs or beneficiaries who would be affected by newly discovered assets have been notified; and
  - (4) if there are any newly discovered assets, that a supplemental Inheritance Tax Return will be filed.

Adopted January 7, 1999, effective February 22, 1999. Rule WO408 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO10.8                   FAMILY SETTLEMENT AGREEMENTS**

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

Adopted November 4, 2005, effective December 25, 2005. Rule WO409 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO14.1(c)               PETITION TO INVADE PRINCIPAL ASSETS AND PETITION FOR COMPROMISE OF CLAIM (INCAPACITATED PERSONS)**

- (i) A Petition to Invade Principal Assets shall be presented to the court in all situations where the guardian intends to invade the principal assets of an incapacitated person. Such Petition to Invade Principal Assets shall contain, at minimum, the following averments of fact:
  - (1) Name, age and residence of the incapacitated person.
  - (2) A reference to the original date of the guardian's appointment.
  - (3) Whether the guardian is bonded and, if so, for what amount.
  - (4) An itemized listing of the assets of the incapacitated person.

- (5) An itemized listing of the income and expenses of the incapacitated person.
- (6) A listing of the names and addresses of all creditors, and the amount due each.
- (7) The purpose for the proposed invasion of principal.
- (8) Whether any prior Petitions to Invade Principal Assets have been presented.
- (9) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition to Invade Principal Assets.
- (10) The maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary (e.g., \$500.00 per month for the period January 1, 2019 through December 31, 2019).

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

- (1) A reference to the original date of the guardian's appointment.
- (2) Whether the guardian is bonded and, if so, for what amount.
- (3) An itemized listing of the assets of the incapacitated person.
- (4) An itemized listing of the income of the incapacitated person.
- (5) A listing of the names and addresses of all creditors, and the amount due each.
- (6) A concise description of the claim which is proposed to be compromised.
- (7) Whether any prior Petitions for Compromise of Claim have been presented.
- (8) That the next-of-kin of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.
- (9) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.

CROSS REFERENCES: For subparagraph (i), see 20 Pa. C.S. § 5536(a), which permits the expenditure of income for the care and maintenance of an incapacitated person without the necessity of court approval, but which requires court authorization for the expenditure of principal.

For subparagraph (ii), see 20 Pa. C.S. § 5521(b), relating to the guardian's powers, duties and liabilities.

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

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

Under 20 Pa. C.S. § 5536(a), court approval is required to use income for anyone other than the minor or incapacitated

person. In such cases, a petition in essentially the same form as provided by this rule should be filed.

Subparagraph (a) adopted February 1, 1996, effective May 1, 1996. Rule W0503 Renumbered 2016, effective 2016. Rescinded and new rule adopted , 2019. Subparagraph (b) adopted February 1, 1996, effective May 1, 1996. Rule W0505 renumbered 2016, effective 2016.

**RULE W014.3 MEDICAL TESTIMONY - GUARDIANSHIPS**

- (a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in all guardianship cases, unless objections are filed at least 10 days before the hearing.
- (b) When an emergency guardianship petition is presented, the testimony of a physician or psychologist shall be taken in the courtroom by speaker telephone unless otherwise directed by order of court.
- (c) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0501 renumbered 2016, effective 2016. Rescinded and new rule adopted August 5, 2019.

**RULE W014.6 PETITION**

- (a) In addition to the allegations required by statute or Supreme Court Rule, when the Petitioner has knowledge that the alleged incapacitated person is a fiduciary, the Petitioner shall indicate this to the Court by averment.

CROSS REFERENCES: See 20 Pa.C.S. § 5511(e) for current required allegations for petitions.  
See 20 Pa.C.S. § 5511(a) regarding the requirement of notice.

Adopted February 1, 1996, effective May 1, 1996. Rule W0501 amended and renumbered , 2016, effective 2016. Subparagraph (1) is taken from prior Rule W019(a)(1). Subparagraph (2) is taken from prior Supreme Court Orphans' Court Rule 14.2(a)(5). Subparagraph (3) is taken from prior Supreme Court Orphans' Court Rule 14.2(a)(9). Rescinded and new rule adopted August 5, 2019.

**RULE WO14.10      PETITION FOR SALE OF ASSETS**

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

- (a) A reference to the original date of the guardian's appointment.
- (b) Whether the guardian is bonded and, if so, for what amount.
- (c) An itemized listing of the assets of the incapacitated person.
- (d) An itemized listing of the income and expenses of the incapacitated person.
- (e) The reason for the proposed sale and the proposed distribution of proceeds. If the property is real estate, (i) whether the property is expensive to maintain; (ii) whether the property is occupied and/or generating income; (iii) whether the guardian needs the proceeds for the care of the incapacitated person.
- (f) If the purpose for the proposed sale is the payment of debts, a listing of the names of all creditors, and the amount due each.
- (g) If the property is tangible personal property, one appraisal shall be attached. If the property is real estate, the petition shall be accompanied by a valuation of two appraisers not related to any of the parties, setting forth the fair market value of the property claimed. The appraisers shall state their profession and shall certify that by virtue of their profession, they are familiar with values of real estate in the vicinity of the subject property.
- (h) If the property is the incapacitated person's residence,
  - (1) That the incapacitated person will not be returning to the property to live. (Indicate where the incapacitated person is currently living, i.e., nursing home, personal care home, etc.)
  - (2) If a private sale, that the price is greater than could be obtained at a public sale. If not, or if the price is less than the appraisal, indicate whether a commission is being charged.
- (i) Notice of the presentation of the Petition for Sale of Assets shall be given to all next of kin of the incapacitated person, whose written consents to the sale are not attached.
- (j) The proposed decree shall contain a provision regarding the posting of bond.

CROSS REFERENCES: See Rules 5.10 and 5.11 the Pa O.C. Rules regarding sales of property.

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0504 amended and renumbered , 2016, effective 2016. Rescinded and new rule adopted August 5, 2019.

**Rule W014.14 FORMS**

- (a) The Final Decree for Permanent/Limited Guardians and the Final Decree for Emergency Guardians shall be in the following form:

**IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA**

**ORPHANS' COURT DIVISION**

\* \* \*

IN RE: Estate of \_\_\_\_\_ )  
 ) No. 65 \_\_\_\_\_  
 an Incapacitated Person )

\* \* \*

FINAL DECREE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, based upon the record and the evidence received, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. This Court finds by clear and convincing evidence that \_\_\_\_\_, is adjudicated a totally incapacitated person. The Court finds that \_\_\_\_\_ suffers from \_\_\_\_\_, a condition or disability which totally impairs his/her capacity to receive and evaluate information effectively and to make and communicate decisions concerning his/her management of financial affairs or to meet essential requirements for his/her physical health and safety.
2. The Court further finds by clear and convincing evidence that his/her \_\_\_\_\_, \_\_\_\_\_, is hereby appointed Plenary Permanent Guardian of the Person of \_\_\_\_\_. The Guardian of the Person shall file an original report annually from the date of the Final Order on the social, medical and other relevant conditions with the Register of



Wills office and this report shall comply with 20 Pa. C.S. Section 5521(C) and Pennsylvania Orphans' Court Rule 14.8(a)(3).

3. His/Her \_\_\_\_\_, \_\_\_\_\_, is hereby appointed Plenary Permanent Guardian of the Estate of \_\_\_\_\_. The Guardian of the Estate (shall) (shall not) be required to post bond in the amount of \_\_\_\_\_ and shall file an Inventory within 90 days and shall file a report beginning one year from the date of the appointment of the guardian, and annually thereafter. The reports must be filed at the Register of Wills office and shall comply with 20 Pa. C.S. Section 5521(C) and Pennsylvania Orphans' Court Rules 14.8(a)(1) and 14.8(a)(2).
4. Neither the Guardian of the Person nor the Guardian of the Estate shall have authority to enter a safety deposit box in the name of \_\_\_\_\_, individually or jointly, without written Court authorization.
5. The Guardian of the Person shall have authority and responsibility to decide where \_\_\_\_\_ shall live and how meals, personal care, transportation and recreation will be provided. The Guardian of the Person shall also have authority to authorize and consent to medical treatment and surgical procedures necessary for the well-being of \_\_\_\_\_, except those powers and duties specifically excluded in 20 Pa.C.S. Section 5521(D).
6. The Guardian of the Estate shall have authority and responsibility to manage and use \_\_\_\_\_'s property primarily for his/her benefit in accordance with 20 Pa.C.S. Section 5536(A). 20 Pa.C.S. Section 5536(A) authorizes the Guardian of the Estate to spend income for the aforesaid purposes without the Court's written approval; however, the Guardian of the Estate cannot spend principal assets without written Court approval.
7. All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the guardian of \_\_\_\_\_'s estate access to any and all assets, records, and accounts maintained for the benefit of \_\_\_\_\_, and the guardian of \_\_\_\_\_'s estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said

assets, records, and accounts. The failure of any financial institution to honor this Order may lead to contempt proceedings and the imposition of sanctions.

8. The Guardian of the Person and the Guardian of the Estate shall perform his/her functions and exercise his/her authority so as to permit the incapacitated person as much daily activity and as much independence as circumstances will permit with safety.
9. The aforementioned judicial determinations have taken into consideration the matters required by 20 Pa.C.S. Section 5512.1. The Court's findings of fact and conclusions of law have been placed on the record at the evidentiary hearing.
10. \_\_\_\_\_ is hereby notified of the right to seek reconsideration of this Order pursuant to Rule 8.2 and the right to appeal this Order within 30 days from the date of this Order by filing a Notice of Appeal with the Clerk of the Orphans' Court. \_\_\_\_\_ may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. \_\_\_\_\_ has a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and \_\_\_\_\_ cannot afford an attorney, an attorney will be appointed to represent \_\_\_\_\_ free of charge.

BY THE COURT:

\_\_\_\_\_  
Judge

ATTEST:

\_\_\_\_\_  
Clerk of the Orphans' Court

**IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA**  
**ORPHANS' COURT DIVISION**

\* \* \*

IN RE: Estate of \_\_\_\_\_ )  
  ) No. 65 \_\_\_\_\_  
an Alleged Incapacitated Person )

\* \* \*

FINAL DECREE FOR EMERGENCY GUARDIAN

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, based upon the record and the evidence received, it is HEREBY ORDERED, ADJUDGED and DECREED:

- 1. This Court finds by clear and convincing evidence that \_\_\_\_\_'s ability to receive and evaluate information effectively is totally impaired because she/he suffers from \_\_\_\_\_.
- 2. \_\_\_\_\_'s ability to communicate decisions is totally impaired because of the aforementioned condition.
- 3. The alleged incapacitated person is in immediate need of an emergency guardian of the person and an emergency guardian of the estate.
- 4. Failure to make these requested appointments of emergency guardians will result in irreparable harm for reasons set forth on the record.
- 5. Because ( \_\_\_\_\_ is presently confined in \_\_\_\_\_ ) of the physical and mental condition of \_\_\_\_\_, it would be harmful for her/him to be present and her/his presence is excused. Her/His \_\_\_\_\_, \_\_\_\_\_, is hereby appointed emergency guardian of the person. The term of this appointment is 72 hours; however, the term of this appointment can be extended for an additional 20 days if the emergency continues beyond the initial 72 hours. (Based upon the evidence this Court has received, the Court finds that the emergency condition will continue beyond the

initial 72 hours. Consequently, the authority granted to the emergency guardian of the person is hereby continued and extended for an additional 20 days beyond the initial 72 hours.)

6. The emergency guardian of the person shall have the authority and responsibility to decide where \_\_\_\_\_ shall live and how meals, personal care, transportation and recreation will be provided. The emergency guardian of the person shall also have authority to authorize and consent to medical treatment and surgical procedures necessary for the well-being of \_\_\_\_\_, except those powers and duties specifically excluded in 20 Pa.C.S. Section 5521(D).
7. \_\_\_\_\_ is hereby appointed emergency guardian of the estate. The term of this appointment is 30 days or when the emergency condition ceases to exist, whichever is shorter. The emergency guardian of the estate (shall) (shall not) be required to post bond in the amount of \_\_\_\_\_. The said emergency guardian of the estate shall have authority and responsibility to manage and use \_\_\_\_\_'s property, primarily for her/his benefit in accordance with 20 Pa.C.S. Section 5536(A). 20 Pa.C.S. Section 5536(A) authorizes the emergency guardian of the estate to spend income for the aforesaid purposes without the Court's written approval; however, the emergency guardian of the estate cannot spend principal assets without written Court approval.
8. All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the guardian of \_\_\_\_\_'s estate access to any and all assets, records, and accounts maintained for the benefit of \_\_\_\_\_, and the guardian of \_\_\_\_\_'s estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said assets, records, and accounts. The failure of any financial institution to honor this Order may lead to contempt proceedings and the imposition of sanctions.
9. The aforementioned judicial determinations have taken into consideration the matters required by 20 Pa. C.S. Section 5512.1. The Court's findings of fact and conclusions of law have been placed on the record at the evidentiary hearing.

10. \_\_\_\_\_ is hereby notified of the right to seek reconsideration of this Order pursuant to Rule 8.2 and the right to appeal this Order within 30 days from the date of this Order by filing a Notice of Appeal with the Clerk of the Orphans' Court. \_\_\_\_\_ may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. \_\_\_\_\_ has a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and \_\_\_\_\_ cannot afford an attorney, an attorney will be appointed to represent \_\_\_\_\_ free of charge.

BY THE COURT:

\_\_\_\_\_  
Judge

ATTEST:

\_\_\_\_\_  
Clerk of the Orphans' Court

New Rule Adopted August 5, 2019.

**RULE WO15.1 MEDICAL TESTIMONY - ADOPTIONS**

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

Adopted September 17, 2009, effective November 2, 2009. Rule WO305 renumbered April 6, 2017, effective May, 29 2017.

**RULE WO15.2 VOLUNTARY RELINQUISHMENT TO AGENCY**

- (a) Court Proceedings – Voluntary Termination of Birth Mother’s Parental Rights  

When the birth mother of a child petitions the court to voluntarily terminate her parental rights and alleges in her petition that the identity and/or domicile of the birth father is unknown, she shall testify, under oath, as to the circumstances of the conception including, but not limited to, a physical description of the alleged birth father, his name, nickname or alias, his occupation or alleged occupation, his home or region or origin, and any subsequent contact with him.
- (b) When the proposed adoptee has been born outside the Commonwealth of Pennsylvania, any petition for adoption filed with the court shall include as exhibits thereto certified copies of all orders of court or decrees issued by a court of competent jurisdiction, which orders or decrees:
  - (1) terminate the parental rights of the birth parents of the child proposed to be adopted;
  - (2) establish rights of guardianship or custody of the child proposed to be adopted in any other person or entity other than the birth parents; and/or
  - (3) establish or set forth any special conditions and/or considerations concerning placement, custody or guardianship and adoption of the proposed adoptee.

Rescinded September 17, 2009; New Rule WO301 adopted September 17, 2009, effective November 2, 2009. Rule WO301(b) rescinded August 27, 2013, effective October 14, 2013. Rule WO301 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO15.3 VOLUNTARY RELINQUISHMENT TO ADULT INTENDING TO ADOPT CHILD**

- (a) Court Proceedings – Voluntary Termination of Birth Mother’s Parental Rights  

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

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

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

Rescinded September 17, 2009; New Rule WO302 adopted September 17, 2009, effective November 2, 2009. Rule WO302(b) rescinded in part August 27, 2013, effective October 14, 2013. Rule WO302 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO15.4                    INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

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

Adopted September 17, 2009, effective November 2, 2009. Rule WO303(a) rescinded August 27, 2013, effective October 14, 2013. Rule WO303 amended and renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.2                    ABORTION CONFIDENTIALITY**

- (a) All proceedings relating to an application shall be confidential.
- (b) Upon the initial filing of the application, the court shall review the application and note any information identifying the pregnant woman (such as name and address and social security number) and shall then seal the application in an envelope, denoting on the face thereof a caption using the initials of the pregnant woman and writing an order on the face of the envelope, which shall indicate the contents of the envelope (for example, application for judicial authorization of an abortion,

verification of applicant, verification of medical provider, etc.). The court shall direct that the record (application, pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material to be maintained, which shall include its own findings and conclusions) be sealed. The order shall specifically state that the envelope shall remain sealed and confidential.

- (c) The Clerk of the Orphans' Court shall docket the case by using a docket number only. Neither the name nor the initials of the pregnant woman shall appear anywhere upon the docket. All subsequent pleadings and exhibits shall be similarly sealed and maintained. A final decree in the matter, using only the initials of the pregnant woman, may appear on the face of a sealed envelope, but the findings of fact and memorandum opinion of the court shall be sealed.
- (d) The identity of the pregnant woman shall not be disclosed in any report or decision of the proceeding.
- (e) All persons shall be excluded from hearings upon the application except the pregnant woman, her attorney, her *guardian ad litem*, her proposed guardian (if she is alleged to be incapacitated), the proposed guardian's attorney, and witnesses of the applicant or of the applicant's attorney and *guardian ad litem*, or other individuals as directed by the court.
- (f) The judge hearing the application shall direct all persons present at any hearing or proceeding upon the application not to disclose any information regarding the case.

CROSS REFERENCES: See Pa. O.C. Rule 16.2 and 16.6.

Adopted February 1, 1996, effective May 1, 1996. Rule WO202 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.10          APPLICATION FOR JUDICIAL AUTHORIZATION OF AN ABORTION**

- (a) Whenever the term "application" is used in the abortion sections of these rules, it shall refer to an application for judicial authorization of an abortion as set forth in (c) below.
- (b) An application may be submitted by a minor, by a guardian on behalf of an incapacitated person, or by a proposed guardian on behalf of an alleged incapacitated person.
- (c) An application and supporting documents shall be substantially in the form available from the judge of the Orphans' Court, and the form of verification to be signed by the applicant shall be in the form set forth in Pennsylvania Orphans' Court Rules.
- (d) The application and supporting documents shall be available from the judge of the Orphans' Court.



- (e) The application shall be submitted to, and filed directly with, the judge of the Orphans' Court for scheduling.
- (f) The verification of medical provider required by the Abortion Control Act shall be attached to the application or shall be delivered to the court no later than 24 hours before hearing scheduled upon the application.
- (g) The date of filing of the application for purposes of compliance with the Abortion Control Act shall be deemed to be the date when the application is first presented to the judge of the Orphans' Court for scheduling.

CROSS REFERENCES: The Abortion Control Act is set forth at 18 Pa.C.S. § 3200, et seq. See Pa. O.C. Rule 16.10.

Adopted February 1, 1996, effective May 1, 1996. Rule WO201 amended and renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.11            CONSENT TO AN ABORTION ON BEHALF OF AN INCAPACITATED PERSON**

- (a) Whenever a person seeks judicial consent to an abortion on behalf of an alleged incapacitated person, a petition for guardianship of the pregnant woman shall be filed either before an application is filed or simultaneously therewith.
- (b) A petition for guardianship or consolidated petition for guardianship and application, filed on behalf of an incapacitated pregnant woman, by a petitioner seeking authority to consent to an abortion on behalf of the pregnant woman, shall maintain the anonymity of the pregnant woman, and confidentiality shall be maintained as set forth in Rule WO16.2. If a petition for guardianship alleges that the alleged incapacitated person is in need of a guardian for the purpose of authorizing the guardian to consent to an abortion that would be in the best interests of the incapacitated person, the petition for guardianship shall contain all of the information required by Chapter 55 of the Probate, Estates & Fiduciaries Code and by the abortion sections of these rules.
- (c) The court will conduct proceedings to determine the capacity of the pregnant woman in the same manner as provided for in Chapter 55 of the Probate, Estates & Fiduciaries Code, and will render a decision on the incapacity of the pregnant woman before proceeding to rule on the application.
- (d) The standard for granting authority to a guardian to consent to an abortion shall be whether or not the procedure would be in the best interests of the incapacitated person.
- (e) The statutory requirement that a decision by the court upon an application shall be rendered within three (3) business days of filing of the application shall apply to filing of the application and not to a prerequisite Petition for Guardianship, unless the two (2) petitions are consolidated.

CROSS REFERENCES: See Pa. O.C. Rule 16.1.

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

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0203 renumbered April 6, 2017, effective May 29, 2017.

**RULE W016.12      GUARDIAN AD LITEM**

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

CROSS REFERENCES: See 18 Pa.C.S. § 3206(e) and Pa. O.C. Rule 16.1, note.

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

Adopted February 1, 1996, effective May 1, 1996. Rule W0204 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.13            MEDICAL TESTIMONY**

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

Adopted February 1, 1996, effective May 1, 1996. Rule WO205 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.14 TESTIMONY OF APPLICANT'S PARENTS**

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

Adopted February 1, 1996, effective May 1, 1996. Rule WO206 renumbered April 6, 2017, effective May 29, 2017.

**RULE WO16.15 TRANSCRIPT OF TESTIMONY**

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

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

The Pennsylvania Rules of Appellate Procedure, Rule No. 3804, requires that the court reporter, without charge to the applicant, transcribe the notes of testimony and deliver them to the Clerk of the Orphans' Court by 5:00 o'clock P.M. on the business day following receipt of the notice of appeal to the Superior Court.

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

Adopted February 1, 1996, effective May 1, 1996. Rule WO207 renumbered April 6, 2017, effective , May 29 2017.