

RULES OF COURT

OF THE

44TH JUDICIAL DISTRICT

WYOMING AND SULLIVAN

COUNTY

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GENERAL RULES

RULE 1. SCOPE

The following General Rules shall apply to all sections of the Court of Common Pleas of the Forty-Fourth Judicial District.

RULE 2. COURT CALENDARS

- (a) The Court of Common Pleas of the 44th Judicial District of the Commonwealth of Pennsylvania shall operate on a continuing court calendar for each year. All civil matters shall be numbered consecutively with the last two digits of the year, commencing on January 1 of each year and continuing through December 31 of each year. All criminal matters shall be numbered consecutively in the same fashion.
- (b) Before January 1 of each year, the court shall adopt a calendar for the ensuing year for each branch of the court, establishing days and dates in which the court will be in open session and such other days and dates as may be necessary, at the discretion of the court, for the convenience and fulfillment of its functions. All references to the calendar in these rules shall refer to days established by the court calendar then in effect.
- (c) Jury panels shall be summoned for service in all divisions of the court for weeks commencing on the days designated for jury trials by the court calendar. Jurors so summoned shall remain eligible for service, and may be recalled from time to time, from the date first summoned to be present until the last day of the period during which such summons shall be made.

RULE 3. COURT STENOGRAPHER AND TRANSCRIPTS PURSUANT TO P.A.R.J.A. NO. 5000.1 ET SEQ.

- (a) The court stenographer shall be paid for each page of transcript produced at a rate of \$2.00 per page and at a rate of \$.50 per copy page.
- (b) In addition to any transcription fee, the stenographer shall be paid for attendance at divorce or divorce master's hearings at the rate of \$50.00 per day, plus mileage, if any, at the rate authorized for employees of Wyoming Court. If the hearing will not be in excess of two (2) hours duration, the stenographer shall be paid a fee on only \$25.00.

- (c) Except where the Commonwealth or a political subdivision thereof is liable for the cost, the stenographer may require a deposit of up to one-half (1/2) the estimated charge for a transcript as a condition precedent to commencing transcription. The stenographer shall also have the right to withhold delivery of the transcript pending payment in full thereof.

RULE 4. MOTIONS COURT

The court will accept motions or petitions by mail. All motions, petitions or similar pleadings shall be mailed to the Prothonotary for filing, including one copy for the Court. The Prothonotary shall then transmit the same to the Court.

RULE 5. COURT EMPLOYEES

- (a) Court employees include tip staves, court crier, court stenographer, district court administrator, and secretaries.
- (b) No court employee shall permit any person to converse with any juror upon any business which the juror may be called upon to act, nor shall any court employee hold such conversation himself or herself.
- (c) No court employee shall recommend any person as counsel, nor shall any compensation or other gratuity, pecuniary or otherwise, be accepted by any such employee from any attorney or party or other person for any cause whatsoever connected with the business of the court, which shall include hearings and trials.

RULE 6. SHORT FORM OF CITATION

These rules may be cited as “44th Jud. Dist. Rules-General”.

RULES OF CIVIL PROCEDURE OF THE
44TH JUDICIAL DISTRICT

RULE 51. SHORT FORM OF CITATION

These rules may be cited as “44th Jud. Dist. Rules-Civil”.

RULE 101. PRINCIPLES OF INTERPRETATION

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect a substantial right of the parties.

RULE 205.1 RULES, MOTIONS, OBJECTIONS AND PETITIONS

- (a) Except as otherwise provided in the Pennsylvania Rules of Civil Procedure or these rules, or upon special allowance by the court, all rules to show cause, preliminary objections and petitions or motions requiring hearing or argument shall be returnable to the next day of miscellaneous court, scheduled by the court calendar, occurring at least twenty-five (25) days from the date of the rule or date of court presentation of the petition or motion, the same to be deemed at issue on the said return date.
- (b) All rules, petitions, objections or motions shall be filed in the office of the appropriate County Prothonotary and shall be served by the moving party within five (5) days of the date of filing or grant as follows:
 - (1) as required by P.R.C.P. 440:
 - (2) unless previously directly presented to the court, a plain copy thereof shall be delivered to the District Court Administrator.
- (c) Each rule, petition, objection or motion, within the purview of Paragraph (a) hereof, shall be assigned a date and time for hearing or argument by the District Court Administrator on the next day of miscellaneous court occurring at least thirty (30) days from the date the same is deemed at issue under Paragraph (a) hereof. Notice of the assigned date and time shall be given each record counsel or unrepresented party at least twenty (20) days prior to the said date of hearing or argument. Nothing herein

shall be interpreted to prevent the court from setting the return day as the date for hearing or argument or both.

- (d) Subject to the provisions of Paragraph (f) hereof, counsel, if all parties are represented, may agree to waive oral argument, and submit the cause to the court on briefs only, in which case the date set for argument shall be the final date for such submission.
- (e) No brief need be filed unless and until required by the court or by these rules. Where briefs have been so required, the moving party or counsel shall file the brief with the Prothonotary of this court and deliver his brief to opposing counsel, the court, and unrepresented parties, no later than ten (10) days prior to the date set for hearing or argument. Opposing counsel or parties shall file the brief with the Prothonotary of this court and deliver his or their briefs to the moving party or counsel, and the court, no later than five (5) days before the day set for hearing or argument, unless the cause is to be submitted on briefs only: in such event, briefs of opposing parties or counsel shall be submitted no later than the final date provided in Paragraph (e) hereof.

RULE 212. TRIAL LIST AND PRE-TRIAL PROCEDURE

- (a) Cases other than actions for divorce and those subject to compulsory arbitration shall be ruled for trial upon praecipe to the Prothonotary by record counsel or parties, filed no later than the day for the close of the trial list, as set the Court Calendar.
- (b) No later than five (5) days after the close of the trial list, the Prothonotary shall submit a list of all cases for trial to the District Court Administrator.
- (c) The District Court Administrator shall assign a date and time for pre-trial conference to each case on the trial list, received pursuant to Paragraph (b) hereof, and give notice by ordinary mail thereof to counsel of record and unrepresented parties, sent not later than seven (7) days prior to the date of such conference. Said notice shall be accompanied by a pre-trial memorandum from to be completed by all conferences and submitted to the court at the conference.
- (d) The Prothonotary shall publish the trial list determined under this Rule in one newspaper of general circulation published in and for the county once a week for two weeks, the first insertion to no later than ten (10) days after the close of the trial list.
- (e) The Prothonotary shall list a general call on the first day of miscellaneous court held after September 1 of each year, or on such other date as the Court may designate from time to time, all civil matters in which no

steps or proceedings have been taken for two (2) years or more prior thereto and shall give notice thereof to counsel of record, and to the parties for whom no appearance has been entered, as provided by Pennsylvania Rule of Judicial Administration, No. 1901(c). If no good cause for continuing a matter is shown at the general call, an order shall be entered forthwith by the court for dismissal.

RULE 220. SELECTION OF JURORS

Upon selection of each jury array by the Jury Coordinator, the names of persons assigned thereto shall be published in a newspaper of general circulation in an issue appearing no later than fifteen (15) days prior to the first date on which the said array is to serve.

RULE 227.1. POST TRIAL MOTIONS AND PETITIONS

- (a) All Motions for Post Trial Relief shall be filed, with copies thereof furnished simultaneously to the opposing counsel or opposing parties if unrepresented by counsel and the District Court Administrator.
- (b) Hearing and argument procedures shall be in accordance with Local Rule 205.1.

RULE 234. SUBPOENAS, NOTICES TO ATTEND, AND NOTICES TO PRODUCE

Any party, or an attorney therefore, who serves, or causes to be served upon a person a subpoena, a notice to attend or a notice to produce, shall file a copy of the same, along with proof of service thereof, with the Prothonotary within five (5) days of the date of service.

RULE 251. DAMAGES, COST OF REPAIRS

- (a) In all actions in which the only damages to be assessed are the cost of repairs theretofore made to property:
 - (1) The Prothonotary on praecipe of the plaintiff, waiving any other damages under said judgment, and the filing of the affidavits, provided by subdivisions (2) and (3) hereof shall assess damages for the cost of the repairs.
 - (2) The praecipe shall be accompanied by an affidavit of the repairman; the affidavit of the repairman shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the

price for labor and material were fair and reasonable and those customarily charged.

- (3) The plaintiff shall send a copy of the affidavit and repair bill to the defendant by ordinary mail directed to his last known address, together with a notice setting forth the date of the intended assessment of damages, which shall not be less than ten (10) days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written praecipe files with the Prothonotary a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

RULE 252. ITEMIZED STATEMENTS SUBMITTED PRIOR TO TRIAL

- (a) Not less than ten (10) days before the date set for trial, counsel may submit to opposing counsel of record, or if no opposing counsel of record, to the opposing party, in writing, itemized statements of damages claimed, such as bills for repairs, medical and hospital expenses or claims of a similar nature, and photographs or plans intended to be offered at the trial, and if not objected to in writing five (5) days prior to the trial, proof thereof shall not be required at the trial.

RULE 400.

- (a) The Prothonotary shall not accept an appeal from the civil judgment of a magisterial district judge unless the same is accompanied by stamped, pre-addressed envelopes addressed to:
 - (1) The appellee at his or her address listed on the complaint filed in the office of the magisterial district judge.
 - (2) The attorney of record for the appellee, if any.
 - (3) The district justice in whose office the judgment was rendered.
- (b) The Prothonotary shall cause copies of the said notice of appeal to be mailed in said envelopes by first class mail and shall note any return or refusal of such mailing on the court's docket. In the event that service of the said notice of appeal cannot be effected by first class mail, it shall be the responsibility of the appellant to cause personal service of the said notice of appeal to be made upon the appellee.
- (c) This rule shall provide the sole means of effecting service of notice of appeal from the judgment of a District Justice.

RULE 430(B)(1).SERVICE BY PUBLICATION

- (a) Unless otherwise provided by statute, these rules, or the Pennsylvania Rules of Civil Procedure, all legal advertisements shall consist of one (1) insertion in one (1) newspaper of general circulation in the county in which the cause is pending, which insertion shall occur at least ten (10) days before hearing or further action.

RULE 1012. ENTRY/WITHDRAWAL OF APPEARANCE

- (a) An attorney who has appeared in a case shall be regarded as counsel of record, whether such appearance is in writing or in person at any open court proceeding.
- (b) An attorney may withdraw his appearance for a party (i), if such withdrawal is accompanied by a written approval of the party and an address of the party where subsequent pleadings may be served, or (ii), if such withdrawal is consented to by the party and another attorney enters his appearance for the party at the same time.
- (c) In all other cases, court approval is necessary for withdrawal of an appearance, which shall be by petition for a rule on the withdrawing attorney's client.

RULE 1018.1 NOTICE TO DEFEND FORMS

- (a) The agency to be named in notices to defendant filed pursuant to Rule 1018.1(1), and in the context of Rule 1018.1(b) of the Pennsylvania Rules of Civil Procedure shall be:

Wyoming County Branch:

Prothonotary of Wyoming County
Wyoming County Courthouse
Tunkhannock, PA 18657

Sullivan County Branch:

Prothonotary of Sullivan County
Sullivan County Courthouse
Laporte, PA 18626

ACTION OF QUIET TITLE:

RULE 1063. SERVICE OF PUBLICATION. NOTICE.

- (a) In all actions wherein service is by publication, notice shall be given to the defendant or defendants, and, if permitted by the court, to a named former owner and his or her heirs and assigns generally, for one (1) week in one (1) newspaper of general circulation in the county. The notice shall be substantially the form set forth in Pennsylvania Rule of Civil Procedure 430(b)(1).

RULE 1066(b)(1) FORM OF JUDGMENT ORDER. NOTICE.

- (a) If the relief granted by the court is under Pennsylvania Rule of Civil Procedure 1066(b)(1), and service has been previously allowed under Local Rule 1063(a) notice of the terms and conditions of the order granting relief shall be given by publication in one (1) newspaper of general circulation in the county in one (1) issue, by the plaintiff or his counsel, and proof thereof attached to the praecipe for final judgment.

COMPULSORY ARBITRATION:

RULE 1301. COMPULSORY ARBITRATION

- (a) All law cases at issue, except actions in divorce, where the amount in controversy, exclusive of interest and cost, is \$50,000.00 or less, except those involving title to real estate, shall first be submitted to and heard by a board of three members of the bar who maintain principal offices or residences within the 44th Judicial District. Other cases or causes as defined in the Act of 1976, July 9, No. 142, Section 2, P.L. 586, 42 PA.C.S.A. Section 7362, may be referred to arbitration by agreement of counsel.

RULE 1302. LIST OF ARBITRATORS. APPOINTMENT TO BOARD

- (a) The Prothonotary of each county shall prepare and maintain a list of available arbitrators, which shall include all the members of the bar maintaining an office or residence within the 44th Judicial District. Exclusion from the list shall be by special order of the court.

- (b)
 - (1) The Prothonotary of each county shall appoint one board of arbitrators for each month of the year. The schedule of arbitrators shall be compiled prior to January 1 of each year and notice given to the bar. Each board shall consist of three attorneys. The Prothonotary shall designate the chairman of each board of arbitrators. The chairman shall have been admitted to the bar not less than three years.
 - (2) Cases subject to arbitration shall be listed therefore on praecipe of either counsel.
 - (3) No attorney shall serve on a board of arbitration in any matter in which a member of his or her firm or an office associate is counsel for any party to the proceeding.
 - (4) All arbitration hearings for Wyoming County shall be held on the first Thursday of each month in the jury room of the Wyoming County Courthouse unless otherwise set by the Chairman of the Board of Arbitrators. The chairman shall schedule the time of each hearing and shall provide written notice thereof to the other arbitrators and counsel of record (or parties, if they are unrepresented) by ordinary mail.
 - (5) All arbitration hearings for Sullivan County shall be held in the courtroom of the Sullivan County Courthouse on such dates and at such time as shall be set by the Chairman of the Board of Arbitrators, who shall provide notice to the other arbitrators and counsel of record (or parties, if they are unrepresented) by ordinary mail.
 - (6) All cases praeciped for arbitration during a calendar month in Wyoming County shall be set for arbitration in the succeeding month, except cases praeciped on or after the 20th of each month, which shall be scheduled for the month following the succeeding month.
- (c)
 - (1) All continuances shall be in the discretion of the Chairman of the Board and shall be made to a day and time certain not more than thirty days from the date originally set by the chairman, who shall give notices of the continued date and time to the parties or their attorneys of record at least five days prior thereto, by ordinary mail or telephone.
 - (2) If an attorney shall be unable to serve on an arbitration panel, he or she shall so inform the Chairman of the Board in writing. It shall be the responsibility of the Chairman of the Board to appoint a substitute arbitrator.

- (3) All cases assigned to a month's arbitration panel shall be heard by that panel. There will be no continuances to another panel.
- (d) (1) Each member of a board of arbitration who has signed the report of the board upon conclusion of the case, or filed a minority report in conjunction therewith, shall receive as compensation for his services a fee and mileage in accordance with the following schedule:
 - Chairman of the Board - \$100.00; (if the case is settled, discontinued, or withdrawn from arbitration - \$50.00);
 - Associate Arbitrator - \$75.00.
- (2) Where notice of settlement, discontinuance, or withdrawal is given after a board of arbitrators has assembled at the designated hearing location, the arbitrators shall be paid full fees as hereinbefore provided.
- (3) In addition, any board member who maintains his principal office (or residence if he has no separate office) other than the municipality in which the hearing is held shall receive mileage at the same rate as paid by the County of Wyoming to its employees to and from his or her said office (or place of residence, if applicable) to the place of hearing on each occasion of required attendance. In cases requiring hearings of unusual duration, or involving questions of unusual complexity, the court, upon petition and for cause shown, may allow additional compensation. All compensation and mileage payments shall be paid from county funds, as in the case of all other county debts. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

RULE 1902 (B). ACTIONS PURSUANT TO PROTECTION FROM ABUSE ACT

- (a) All orders issued by Magisterial District Judges under the Protection from Abuse Act shall indicate that a hearing on the petition is scheduled before the Court of Common Pleas at a specified date and time which shall be the next business day of the Court of Common Pleas at 8:00 o'clock a.m.

RULE 1910 ACTIONS FOR SUPPORT

- (a) All actions for support shall be given a number by the Domestic Relations Section and forwarded to the Prothonotary for docketing.
- (b) The respondent or defendant shall be served by certified mail, regular mail, or enforcement officer required to attend a conference at a definite time and place.

- (1) On a date to be specified by the Domestic Relations Office, but not later than five (5) working days preceding scheduled support conferences, the defendant shall submit to the Domestic Relations Office a copy of the following:
 - a. a true copy of his or here most recent Federal Income Tax Return as filed; and
 - b. his or her pay stubs for the preceding six months; and
 - c. a completed income and expense statement on the forms he or she received from the Domestic Relations Office.
- (c) At conference, following procedures as provided by Pennsylvania Rule of Civil Procedure No. 1910.11, if any agreement is obtained for support at the amount suggested by the initiating court, an agreement shall be signed by the respondent or defendant which shall be submitted to the court.
- (d) If no agreement is reached at the amount suggested by the initiating court, then the procedure set forth in Pennsylvania Rule of Civil Procedure No. 1910.11(f) shall be followed.
- (e) Actions to be instituted in the 44th Judicial District should be referred to the Domestic Relations Section, which will forward petitions to other jurisdictions and to the Prothonotary for filing.

RULE 1910.19. PETITIONS TO AMEND, DECREASE, SUSPEND OR VACATE

- (a) All petitions to modify a support order shall be made on a form prescribed and approved by the court.
- (b) If the reason for such action is intradepartmental (such as an amendment to allow transmittal to the Department of Public Welfare or to terminate such previous direction), the Domestic Relations Section is allowed to institute the action.

RULE 1920.45 APPROVED COUNSELING PROFESSIONALS

- (a) A list of professionals qualified by this court to provide counseling services under the provision of the Divorce Code is:

Wyoming County

Community Counseling Services
Tyler Memorial Hospital
5950 SR 6
Basement Level

Tunkhannock PA 18657
570-836-3118

Sullivan County

Mental Health Associates
21 Main Street
Towanda PA 18848
570-265-2525

RULE 1920.51 DIVORCE

- (a) Upon request by counsel for either party, hearings before the court in Actions of Divorce shall be set by the District Court Administrator on any dates set by the court calendar for such purposes as would allow (10) days notice of hearing to be given, in accordance with Paragraph (b) hereof.
- (b) Any written notice of hearing required by Pennsylvania Rule of Civil Procedure 1920.51 shall less than (10) days prior to the date of said hearing.
- (c) The notice of hearing shall be in substantially the following form:

(Caption)

TO (Name of defendant or counsel of record):

You are hereby notified that a hearing in the above-captioned Action in Divorce will be held by the above-named court in the courthouse at _____ Pennsylvania, on the _____, 20__, at _____ o'clock, at which time you may appear with witnesses. If you do not appear the hearing will proceed in your absence.

1920.51(2)(i) DIVORCE MASTER

- (a) The court shall designate one or more members of the bar to act as permanent Divorce Master.
- (b) Upon receipt of a praecipe from a party who has complied with the provisions of Pa.R.C.P. 1920.31(a)(1) and Pa.R.C.P. 1920.33(a), where

either or both apply, concerning the filing of certain financial information, and upon receipt of the fee herein below specified, the court shall enter an order appointing a Master to hear such matters as shall be at issue in the case, and the Prothonotary shall cause the file in the said matter to be transmitted to the Master. The Master shall forthwith give notice of his or her appointment to the parties, together with a copy of these Rules of Court.

- (c) The party who has not sought the appointment of a Master shall comply with the provisions of Pa.R.C.P. 1920.31(a)(1) and Pa.R.C.P. 1920.33(a), where either or both apply, within thirty (30) days of date of mailing by the Master to such party of notice of the appointment of the Master.
- (d) The Master, after due notice, shall conduct such hearings and/or conferences at such times and at such places as the said Master deems appropriate. Hearings and conferences need not occur within the geographical limits of the 44th Judicial District. The Master shall be empowered to direct the filing of such additional documents relating to financial or property matters as the Master may deem necessary.
- (e) All hearings and conferences shall be scheduled solely by the Master. Continuances of conferences and/or hearings shall be solely at the discretion of the Master, except as is set forth herein below in Paragraph (f).
- (f) Requests for continuances based on an assertion that pre-hearing discovery has not been completed shall be made to the Court of Common Pleas in the form of a Motion to Strike the Appointment of a Master.
- (g) The party requesting the appointment of a Master shall deposit with the Prothonotary of this court the sum of Three Hundred Fifty (\$350.00) Dollars at the time of the filing of the praecipe for such appointment. If the party seeking appointment of the Master has been granted In Forma Pauperis status, then no deposit of the Master's fee shall be required, and the County of Sullivan or Wyoming, as the case may be, shall pay the Master's fee. The Master or court, however, in appropriate cases may direct a party who has not been granted In Forma Pauperis status to reimburse the county which has paid the Master's fee.
- (h) The Master shall be paid not less than Three Hundred Fifty (\$350.00) Dollars for his or her services as Master unless otherwise agreed by the Master. In the event that the time for the Master's hearing and the time required to compile the Master's report shall exceed five (5) hours, the Master shall be additionally compensated at the rate of One Hundred Twenty-Five (\$125.00) Dollars per hour or portion thereof in excess of five hours. The Master shall specify in his or her report to the court the

amount of Master's fee due and shall allocate responsibility for such payment to one or both parties. Payments in excess of the deposited amount shall be made to the Prothonotary for transmittal to the Master within twenty (20) days of the date of the Master's report. In the event that timely exceptions are filed as to such allocation, the County of Sullivan or Wyoming, as the case may be, shall make such payment to the Master, and the court shall direct reimbursement to said county in its ruling on such exceptions.

RULE 1915.3 CHILD CUSTODY

- (a) Unless otherwise permitted by order of court, no Decree in Divorce shall be entered in any divorce proceeding commenced after January 15, 1998 wherein the parties are the parents of a child or children who are under the age of 18 years on the date of filing of the complaint, unless the Court Administrator shall have filed with the Prothonotary a certification of the parties' completion of the "Children Coping with Divorce and Family Conflict" program, "Kids First" program, or other similar program approved by the court.
- (b) The Prothonotary shall collect, in addition to all other fees and cost, the sum of Fifty (\$50.00) Dollars from all plaintiffs filing Divorce Form "A", indicating that there are minor children born of the marriage, and from all plaintiffs filing a child custody complaint, unless the plaintiff shall have been granted In Forma Pauperis status. Further, the Prothonotary shall collect the sum of Fifty (\$50.00) Dollars from all defendants enrolling in the "Children Coping with Divorce" program or "Kids First" program (Divorce Form "B"), unless In Forma Pauperis status shall have been granted to him or her. Should promptly remit the same to the Prothonotary.
- (c) The Prothonotary shall remit to the appropriate program on a monthly basis such amounts as shall be set by further court order.
- (d) Divorce Forms "A" and "B", attached hereto, are approved and incorporated herein by reference.
- (e) Failure by a party to comply with an order of court directing attendance at one of the programs set forth in Subparagraph (a) will result in the initiation of contempt of court proceedings against said party.
- (f) A copy of any complaint seeking legal, physical, or partial physical custody shall be delivered upon the Court Administrator by the party or attorney filing same.

Divorce Form "A"

(CAPTION)

AFFIDAVIT

I, _____, the Plaintiff in the above matter, state

that -

(Check one)

_____ There are no children born of this marriage who are now under the age of eighteen (18) years.

_____ The following children born of this marriage are presently under the age of eighteen (18) years.

NAME

ADDRESS

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

I verify that the above statements are true and correct, and are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Divorce Form "B"

REGISTRATION FORM

PLEASE ENROLL ME IN THE DIVORCE AND/OR CHILD CUSTODY
EDUCATION PROGRAM.

_____ ATTACHED IS MY PAYMENT OF FIFTY (\$50.00) DOLLARS

_____ I HAVE BEEN GRANTED IN FORMA PAUPERIS STATUS

DATE: _____

_____ NAME

ADDRESS: _____

WORK PHONE: _____

HOME PHONE: _____

INSTRUCTIONS AND FORMS FOR CUSTODY AND VISITATION ACTIONS

This packet will help you proceed on your own and get an Order concerning custody or visitation. The instructions apply to proceedings only in Wyoming and Sullivan Counties. For further instructions, read the Rules of Civil Procedure applicable to custody cases.

Before you begin, **read completely** each set of instructions.

A. COSTS

There are court costs which you will be required to pay, unless you ask for and are granted in forma pauperis status.

The first cost is the fee for filing the custody complaint with the court. The filing fee is **\$123.50**.

There is also a fee for sending a copy of the complaint, certified mail, to the other parent. You are responsible for these costs.

There may be a fee for making copies of the complaint. You may be responsible for these copies.

There is also the cost of enrolling in the mandatory education program (“Kids First” or “Children Cope with Divorce”). The cost is **\$50.00**.

You should consider these fees before you go further.

B. COMPLETE THE FORMS: COMPLAINT FOR CUSTODY-AFFIDAVIT TO FILE FREE OF COST.

To get an Order concerning custody or visitation, you must complete the forms in this packet.

The first form is a **Complaint for Custody** (“Complaint”). It gives the Court all the facts it needs to start the action.

The second form is the enrollment for the mandatory education program.

The third form is an **Application to Proceed In Forma Pauperis and Affidavit**

(“Application”). “In Forma Pauperis” is your request to allow the Court, based upon income guidelines, to let you file free of cost. If the court approves your Application, all court costs and fees are waived. IF THE COURT DENIES YOUR APPLICATION, YOU WILL BE REQUIRED TO PAY THE FILING FEE.

The forth form is a **Criminal Record/Abuse History Verification** (“Verification”). Complete one form for each adult (including yourself) living with you and attach the Verification to your Complaint for Custody. “Adult” refers to anyone eighteen (18) years of age or older.

Complete these forms entirely. Do not leave any blank spaces.
Some suggestions:

- (a) You are the Plaintiff. The other parent is the Defendant.
- (b) You must fill in the name of the Plaintiff and the Defendant, and the County where the court is located. The Complaint should be filed in the county where the children live.
- (c) The Complaint and Affidavit are in the forms required by the courts. Some questions and facts are repeated. Nonetheless, all information must be given and all questions must be answered.
- (d) If you do not know the answer, mark “unknown”.
- (e) On some questions, you are given two possible answers in parenthesis. Cross out the one that is wrong. Write in the correct answer.
- (f) You must give approximate dates and addresses of the past residences of the children.
- (g) The forms must be printed in ink or typewritten.

C. **FILING AND SERVICE** – Once the papers are completely and properly filled out, they must be filed and served. READ THE FOLLOWING INSTRUCTIONS COMPLETELY.

1. **FILING**

- (a) The Office of the Prothonotary, or Court Clerk, is on the first floor of the Courthouses in both Wyoming and Sullivan Counties.
- (b) The original and one copy of the Complaint for Custody must be filed in the Prothonotary’s Office. The copy will be sent to the Court Administrator by the Prothonotary.
- (c) You should also file an original and one copy of the Affidavit.
- (d) To file, you need to hand the Clerk the papers. They will do the rest.
- (e) You should keep two copies of the complaint – one to serve on the other party and one for yourself.

2. **FILING FEE**

- (a) You can pay the filing fee at the time you file.
- (b) If you cannot pay the filing fee, the Clerk will send your application to file free of cost to the Judge. The Judge will review your affidavit and based upon income guidelines will decide your request. It may take a week.
- (c) **You must give the Clerk a telephone number.** The Clerk will contact you when the Judge decides if you are to be granted in forma pauperis status.
- (d) If the Judge denies your request, you will have ten (10) days to pay the filing fee. **If you do not pay, the case will be dismissed.**

3. **SERVICE OF THE COMPLAINT**

- (a) You must give the other party (parent) legal notice that you have filed for custody. This type of notice is known as “service”.
- (b) Service of all Orders and the Complaint is your responsibility. To do so, you must send the Orders and Complaint by certified mail, return receipt requested, to be signed by the ADDRESSEE ONLY. The addressee must be the Defendant. The Post Office can help you send certified mail.
- (c) Service must be made within thirty (30) days from the date the Complaint is filed in the Prothonotary’s Office.

4. **PROOF OF SERVICE**

- (a) Service is complete once you have received back the green card showing the Defendant has received the Complaint.
- (b) After service is made, complete form #5 – Certificate of Service.
- (c) The completed Certificate of Service form must be filed with the Prothonotary. The sender’s receipt and green card should be stapled to the Certificate of Service.

D. **CONFERENCE AND ORDER**

- (a) You will be notified by mail of the date, time and place of the conference with the court.
- (b) You must attend the conference.
- (c) The child(ren) should not be brought to the conference.
- (d) The other party (parent) will be notified of the conference. He/She may attend and ask the court for either custody or visitation.
- (e) The court will attempt to work out a custody arrangement with both parents.
- (f) This is not a hearing. You should not bring witnesses. The court will only talk to the parents or a lawyer representing a parent.

IN THE COURT OF COMMON PLEAS OF THE 44th JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL ACTION – LAW

_____,
Plaintiff

: NO. _____

VS.

:

_____,
Defendant

:

COMPLAINT FOR CUSTODY

1. Plaintiff is _____, residing at _____
(Name) (Street)

_____,
(City) (Zip) (County)

Phone Number _____

2. Defendant is _____, residing at _____
(Name) (Street)

_____,
(City) (Zip) (County)

Phone Number _____

3. Plaintiff seeks _____ of the following child(ren).
(custody) (partial custody/visitation)

| NAME | PRESENT RESIDENCE | AGE | D.O.B. |
|-------|-------------------|-------|--------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

4. The child(ren) _____ born out of wedlock.
(was) (was not)

5. The child(ren) is presently in the custody of _____
(Name)
who resides at _____
(Street) (City) (Zip) (County)

6. During the past five years, the child(ren) have resided with the following
persons and at the following address:

| Dates (Most recent first) | All addresses where child lived | Parent/person residing with child |
|------------------------------|------------------------------------|--------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

7. Mother of the child(ren) is _____
(name)
currently residing at _____
(Street) (City) (Zip) (County)
She is _____
(married) (divorced) (single)

8. Father of the child(ren) is _____
currently residing at _____
(Street) (City) (Zip) (County)
He is _____
(married) (divorced) (single)

9. The relationship of Plaintiff to the child(ren) is that of _____.
(mother) (father)

The Plaintiff currently resides with the following persons:

| (Name) | (Relationship) |
|--------|----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

10. The relationship of Defendant to the child(ren) is that of _____.
(mother) (father)

11. The Defendant currently resides with the following persons:

| (Name) | (Relationship) |
|--------|----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

12. Plaintiff _____ participated as a party or witness, or in
(has) (has not)
another capacity, in other litigation concerning the custody of the child(ren) in this or
another court. The court, term and number, and its relationship to this action is:

13. Plaintiff _____ information of a custody proceeding
(has) (has not)
concerning the child(ren) pending in a court of this Commonwealth. The court, term and
number, and its relationship to this action is:

14. Plaintiff _____ of a person not a party to these
(knows) (does not know)
proceedings who has physical custody of the child(ren) or claims to have custody or
visitation rights with respect to the child(ren). The name and address of such person is:

15. The best interest and permanent welfare of the child(ren) will be served by
granting the relief requested because **(explain why you should be given custody or
visitation):**

16. Each parent whose parental rights to the child(ren) have not been terminated
and the person who has physical custody of the child(ren) have been named as parties to

this action. All other persons, named below, who are known to have or claim a right to custody or visitation of the child(ren) will be given notice of the pendency of this action and the right to intervene:

| Name | Address | Basis of Claim |
|-------|---------|----------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

WHEREFORE, Plaintiff requests the Court to grant

_____ of the child(ren).
(CUSTODY) (PARTIAL CUSTODY/VISITATION)

17. Plaintiff's current employment or source of income:

_____.

18. Defendant's current employment or source of income:

_____.

19. Criminal Record/Abuse History Verification for Plaintiff and all adults living in Plaintiff's household are attached as exhibit "A".

20. Defendant is hereby notified to provide the Court with a Criminal Record/Abuse History Verification for all adults residing with Defendant.

I VERIFY THAT THE STATEMENTS MADE IN THIS COMPLAINT ARE TRUE AND CORRECT. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 PA. C.S. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

DATE: _____

Signature of Plaintiff pro-se

IN THE COURT OF COMMON PLEAS OF THE 44th JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL ACTION – LAW

_____,
Plaintiff : NO. _____

VS. :

_____,
Defendant :

**AFFIDAVIT FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

1. I am the (Plaintiff) (Defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

a. NAME: _____
ADDRESS: _____
PHONE NUMBER: _____
SOCIAL SECURITY NUMBER: _____

b. EMPLOYMENT: If you are presently employed, state
Employer: _____
Address: _____
Salary or Wages per month: _____
Type of work: _____

If you are presently unemployed, state
Date of last employment: _____
Salary or wages per month: _____
Type of work: _____

c. Other income within the past twelve months: _____

Business or profession: _____
Other self-employment: _____
Interest: _____
Dividends: _____
Pension and annuities: _____
Social security benefits: _____
Support payments: _____
Disability payments: _____
Unemployment compensation and supplemental
benefits: _____
Workman's compensation: _____
Public assistance: _____
Other: _____

- d. Other contributions to household support
(Wife) (Husband) Name: _____
If your (wife) (husband) is employed, state
Employer: _____
Salary or wages per month: _____
Type of work: _____
Contributions from children: _____
Contributions from parents: _____
Other contributions: _____
- e. Property owned
Cash: _____
Checking Account: _____

Savings Account: _____
Certificate of deposit: _____
Real estate (including home) : _____
Motor vehicle: Make _____, Year _____, Cost _____,
Amount owed \$ _____
Stocks: _____ Bonds: _____
Other: _____
- f. Debts and obligations
Mortgage: _____
Rent: _____
Loans: _____
Other: _____

- g. Persons dependent upon you for support
(Wife) (Husband) Name: _____

Children, if any: _____
Name: _____ Age: _____
_____ Age: _____
_____ Age: _____
_____ Age: _____

Other persons:
Name: _____
Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.
5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Signature

IN THE COURT OF COMMON PLEAS OF THE 44th JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL ACTION – LAW

_____, : NO. _____
Plaintiff
VS. :
_____, :
Defendant :

APPLICATION TO PROCEED IN FORMA PAUPERIS

Kindly allow _____ in the above-captioned matter to proceed in Forma Pauperis based upon the attached affidavit.

I believe I am unable to pay the costs involved in this case.

Proceeding pro se

ORDER

AND NOW, this _____ day of _____, _____, upon consideration of the attached application to proceed in Forma Pauperis and the income affidavit, the same is **GRANTED/DENIED.**

By the Court,

REGISTRATION FORM

PLEASE ENROLL ME IN THE DIVORCE AND/OR CHILD CUSTODY
EDUCATION PROGRAM.

_____ ATTACHED IS MY PAYMENT OF FIFTY (\$50.00) DOLLARS

_____ I HAVE BEEN GRANTED IN FORMA PAUPERIS STATUS

DATE: _____ NAME _____

ADDRESS: _____

WORK PHONE: _____ HOME PHONE: _____

IN THE COURT OF COMMON PLEAS OF THE 44th JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL ACTION – LAW

_____, : NO. _____
Plaintiff
VS. :
_____, :
Defendant :

CERTIFICATE OF SERVICE

I, _____, Plaintiff, certify that on the
_____ day of _____, _____, a true and correct copy of the
Complaint for Custody was mailed by certified mail to the Defendant,
_____, at Defendant's current residence of
_____.

Defendant received the Complaint on the _____ day of
_____, _____. Sender's receipt and return card are
attached hereto.

Signature of Plaintiff

RULE 1921.1 THE JUDICIAL REVIEW OF DEPENDENT CHILDREN IN PLACEMENT

- (a) The juvenile court, or a court-appointed hearing officer, shall review the placement of every dependent child who has been placed outside his or her home to determine whether the best interests of the child are being served by the placement.
- (b) The juvenile court may conduct an initial formal review of every dependent child in placement three - six months after the dispositional hearing and at three - six month intervals thereafter until the child is returned to his or her home or removed from the jurisdiction of the court.
 - (1) A formal review may consist of an in-court hearing before the court, but shall consist of an examination by the court of appropriate papers, affidavits, progress reports, including the status of aftercare planning in each case, and other materials as submitted to the court by the County Children and Youth Services, or others.
 - (2) Three - Six months after dispositional hearing and at three - six month intervals thereafter while the child continues in a placement outside the home, the County Children and Youth Agency shall give written notice of the right to request a formal review. This notice shall be provided at least ten (10) days prior to the date set scheduling such a review. Notice shall be given to the following parties, each of whom shall be entitled to participate in the proceeding:
 - (a) the child, if age appropriate;
 - (b) the child's parents or legal guardian;
 - (c) counsel for the child.Upon receipt by the Children and Youth Agency of a request for a formal review hearing, such a hearing shall be scheduled with the court at the earliest possible date.
 - (3) The court may, either on its own motion or in response to a petition from any party with an interest in the welfare of the child, schedule a formal review at any time.

- (c) The goals and objectives for each dependency case shall be presented to the court at the dispositional hearing.
- (d) Judicial review as provided for under these rules shall include, but not be limited to, a determination by the court as to whether:
 - (1) the goals and objectives as presented at the dispositional hearing are being met and continue to be approved;
 - (2) the services being provided to the child, the parents or legal guardians are appropriate;
 - (3) the views of the child were sought regarding the case goals and objectives which have been established;
 - (4) there are obstacles which may hinder or prevent the attainment of the established goals for the return of the child to his or her home or other placement objective;
 - (5) there is an alternative to the continued placement of the child.
- (f) After each formal review, the court may issue an order consistent with what is in the best interests of the child.

RULE 1921.2. THE JUDICIAL REVIEW OF DELINQUENT CHILDREN IN PLACEMENT

- (a) The juvenile court, or a court-appointed hearing officer, shall review the placement of every delinquent child who has been placed outside his or her home to determine whether the best interests of the child are being served by the placement.
- (b)
 - (1) The juvenile court shall conduct the initial informal review of every delinquent child in placement six months after the dispositional hearing and at six-month intervals thereafter until the child is returned to his or her home or removed from the jurisdiction of the court.
 - (2) An informal review may consist of an examination by the court of appropriate papers, affidavits, progress reports, including the status of aftercare planning in each case, and other materials as submitted to the court by the Juvenile Probation Department, the placement agency, or others as the court finds necessary.
- (c)
 - (1) The juvenile court may conduct an initial formal review of each delinquency child in placement at any time within the first six

months after the dispositional hearing and at six-month intervals thereafter until the child is returned to his or her home or removed from the jurisdiction of the court.

- (2) A formal review by the court shall consist of an in-court hearing before the court pursuant to the Juvenile Act;
- (4) Six-months after the dispositional hearing and at six month intervals thereafter while the child continues in placement outside the home, the probation department shall give written notice of the right to request a formal review. This notice shall be provided at least ten (10) days prior to the date set for scheduling for such a review. Notice shall be given to the following parties, each of whom shall be entitled to participate in the proceeding:
 - a. the child;
 - b. the child's parents or legal guardians;
 - c. counsel for the child.
- (4) Upon request by the Probation Department of a request for a formal review hearing, such a hearing shall be schedule with the court at the earliest possible date.
- (5) The court may, either on its own motion or in response to a petition from any party with an interest in the welfare of the child, schedule a formal review at any time.
- (d) Goals and objectives shall be established by the Juvenile Probation Department for each case and shall be presented to the court at the dispositional hearing.
- (e) After each formal or informal review, the court may issue an order consistent with what is in the best interests of the child.

**RULES OF CRIMINAL PROCEDURE OF THE
FORTY-FOURTH JUDICIAL DISTRICT**

RULE 4. SHORT FORM CITATION

These rules may be cited as: “44th Jud. Dist. Rules – Crim.”

**RULE 101A. APPROVAL OF POLICE COMPLAINTS AND ARREST
WARRANT AFFIDAVITS BY ATTORNEY FOR THE
COMMONWEALTH**

The District Attorneys of Wyoming County and Sullivan County having filed a certification pursuant to Pa.R.Crim.P. 101A, criminal complaints, and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging one or more of the following offenses, shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing:

- (a) Criminal Homicide in violation of 18 PA.C.S. Section 2501; Murder of any degree in violation of 18 Pa.C.S. Section 2502; Voluntary Manslaughter in violation of 18 Pa.C.S. Section 2503; or Involuntary Manslaughter in violation of 18 Pa.C.S. Section 2504; or
- (b) All offenses specified in Chapter 31 of the Pennsylvania Crimes Code (sex offenses).
- (c) Homicide by Motor Vehicle in violation of 75 P.S. Sections 3732 and 3735; Aggravated Assault by Vehicle (DUI related) in violation of 75 Pa.C.S.A. Section 3735.1; or
- (d) Aggravated Assault in violation of 18 Pa.C.S.A. Section 2702.
- (e) All offenses specified in Chapter 37 of the Pennsylvania Crimes Code (robbery and related offenses).

**RULE 120. PROCEDURE IN COURT CASES INITIATED BY ARREST
WITHOUT WARRANT**

- (a) A procedure whereby an arresting officer, when the officer deems it appropriate, may promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before an issuing authority is approved, when the following conditions have been met:
 - (1) the most serious offense charged is a misdemeanor of the second degree;
 - (2) the defendant is a resident of the Commonwealth;
 - (3) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
 - (4) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
 - (5) the defendant does not demand to be taken before an issuing authority.

RULE 302. WITHDRAWAL OF COUNSEL

- (a) No counsel may withdraw representation of a defendant without prior court approval, application for which shall be by petition with appropriate notice to the defendant of the date, time and place set for any hearing thereon.

RULE 303: SCHEDULING OF CRIMINAL CASES

- (a) ARRAIGNMENT be conducted by the District Attorney in the:
 - (1) Wyoming County Branch – at 8:30 a.m. on the second Wednesday of each month in Courtroom No. 1, Wyoming County Courthouse.
 - a. In the event that the second Wednesday of the month shall be a holiday, arraignment shall occur on the next business day.
 - (2) Sullivan County Branch – at 8:30 a.m. on the miscellaneous court date set by the court calendar for each month.
 - (3) Written notice of the arraignment date and place shall be personally delivered by the District Justice to the Defendant and his or her counsel, immediately upon conclusion of a preliminary hearing or waiver of preliminary hearing wherein criminal charges were held for court.

(4) Criminal cases will be scheduled for an arraignment date occurring not less than twenty-one days following the preliminary hearing or waiver thereof.

(b) STATUS CALL:

(1) All pending criminal cases, other than those pending sentence, will be the subject of a monthly status call by the court.

(2) Status call will occur:

a. in Courtroom No. 1, Wyoming County Courthouse on such dates and at such times as shall be fixed in the annual court calendar.

(3) Written notice of the next status call date shall be provided to the Defendant and his or her counsel of record by the District Attorney at the time of arraignment.

(4) The District Attorney or the Assistant District Attorney and counsel of record must appear at all status calls. If there shall be no counsel of record, the Defendant must appear at status call.

(5) At status call, the court shall determine whether the case is to be set for trial, plea, A.R.D. or nolle prosequi, and shall, at that time, set a date and time for the Defendant's next court appearance. Defense counsel shall be responsible for notifying his or her client as to the next court appearance.

(c) TRIAL:

The court will schedule all criminal trials.

RULE 306. OMNIBUS PRE-TRIAL MOTIONS FOR RELIEF AND MOTIONS TO SUPPRESS

(a) All omnibus pre-trial motions for relief under Pennsylvania Rules of Criminal Procedure 306 or motions to suppress evidence under Pennsylvania Rule of Criminal Procedure 323, unless allowed at trial, must be accompanied by a brief or a memorandum of law by the moving party, a copy of which shall be simultaneously furnished the District Attorney.

RULE 311. PRE-TRIAL CONFERENCES

- (a) At least fourteen (14) days prior to the date set aside for the selection of juries, the District Attorney shall inform the court of those cases which appear on the trial list in which the defendant is unrepresented by counsel, in order that the court may direct a pre-trial conference be held on the courts own motion.
- (b) In cases where the defendant is represented by counsel, the court will direct that a pre-trial conference be held, either
 - (1) upon request of the District Attorney, or
 - (2) upon request of counsel for the defendant, or
 - (3) upon the court's own motion.

RULE 1123. POST-TRIAL MOTIONS

- (a) Where motions for new trial or in arrest of judgment, or both, have not been argued before the trial judge immediately upon the conclusion of the trial and are thereafter timely filed, copies thereof shall be submitted simultaneously with filing to the court and the District Attorney by the moving party. Each motion on the basis of errors appearing on the face of the record shall set forth the specific errors alleged. If errors are alleged which were not raised in pre-trial proceedings, or at trial, the motion shall state the grounds why they should be allowed to serve as the basis for post-trial motions. In all written motions, the moving party shall state whether a partial or full transcript of the testimony at trial is required and set forth the reasons therefore. Upon receipt of the post-trial motions, the trial judge shall determine whether a partial or full transcript of the testimony shall be made.
- (b) In the event that the trial judge shall order the transcription of all or a portion of the trial testimony, the District Court Administrator will schedule the motion for argument on the next day for miscellaneous court, as set by the calendar, occurring not less than twenty-five (25) days after the filing of the transcript of the testimony with the Clerk of Courts, otherwise not less than twenty-five (25) days after the filing of the motion. Notice of argument date shall be given counsel by the District court Administrator by ordinary mail not less than twenty (20) days prior to the said argument date.
- (c) The brief of the moving party shall be furnished to the District Attorney, with a copy to the court, ten (10) days prior to argument, and the brief of the District Attorney may be filed on the day set for the argument.
- (d) By agreement of counsel for the moving party and the District Attorney, argument may be waived and motions submitted on briefs only (the last

day for such submission being the date set for argument under (a) hereof), unless oral argument is required by the court.

RULE 1130. ATTORNEY AT WITNESS

- (a) An attorney called and examined as a witness for his client shall take no part in the trial subsequent to such examination, unless specially permitted by the trial judge.

RULE 1131. EXAMINATION OF WITNESSES

- (a) The entire examination of any witness shall be conducted by one counsel for a party for whom the witness is called.

RULE 1132. GENERAL CALL

- (a) The Clerk of Courts shall list at the first day of miscellaneous court (criminal) held after September 1 of each year, all criminal proceedings in which no steps or proceedings have been taken for two years or more prior thereto, and shall give notice thereof to the District Attorney, any private prosecutor and the defendant, as provided by Pennsylvania Rule of Judicial Administration No. 1901(c). If no good cause for continuing a proceeding is shown at the General Call, an order for dismissal shall be entered forthwith by the court.

RULE 1403. PRE-SENTENCE REPORTS

- (a) The reports of any pre-sentence investigation ordered to be conducted of any defendant scheduled for sentencing shall be available for pickup only by counsel during business hours in the office of the District Court Administrator three (3) business days before sentence.

RULE 1407. FINES, MONEY PENALTIES AND COSTS

- (a) Witnesses claiming witness fees or mileage, or both, for court attendance shall file with Clerk of Courts a bill containing the following certification:
 - (1) the dates of attendance;
 - (2) the number of miles to and from the witness's place of residence and the courthouse;

- (3) that the witness was subpoenaed;
 - a. that the witness has not received other witness fees for other cases conducted on the same day;
 - b. that the witness was not a defendant in another prosecution called for trial on the same day; and
 - c. that the witness is not a salaried police official.
- (b) In all cases where a defendant is ordered to pay a fine, money penalty, costs of restitution and costs of prosecution, or any of these, the same shall be paid to the Clerk of Courts, unless otherwise ordered by the court.
- (c) In the event that the court shall have ordered any defendant to pay a fine, money penalty, costs of restitution and costs of prosecution, or any of these, to the Probation Officer, the same, upon receipt thereof, shall be deposited as soon as reasonably possible, by the said Probation Officer, in an escrow or trust account in a bank.
- (d) The Clerk of Courts and Probation Officers shall keep proper records of all moneys received in the manner prescribed in paragraphs (b) and (c) hereof.
- (e) At the end of each calendar month the Probation Officer and Clerk of Courts shall pay into the county treasury all money penalties and costs of prosecution which have been designated for the use of the county, and at the same time shall file a statement thereof in the Office of the County Commissioner, Office of the Clerk of Courts, and the Office of the Probation Department.
- (f) At the end of each month or at some prior convenient time at the discretion of the Probation Officer, all costs of restitution collected by the said officer shall be distributed to the person entitled thereto by virtue of the provisions of the order of court providing for such collection.

RULE 2002A. APPROVAL OF SEARCH WARRANT APPLICATION BY ATTORNEY FOR THE COMMONWEALTH

- (a) The District Attorneys of Wyoming County and Sullivan County having filed a certification pursuant to Pa.R.Crims. P. 2002A, search warrants, in all circumstances, shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

RULE 9016. SUBPOENAS

- (a) Any party, or an attorney therefore, who serves, or causes to be served upon a person a subpoena, shall file a copy of the same, along with proof of service thereof, with the Clerk of Courts within five (5) days of the date of service.

RULE 4006. BAIL

- (a) Determination of the fair market value of realty posted as surety for bail in criminal proceedings shall be made
 - (1) For realty located in Wyoming or Sullivan County, by either written appraisal of a license real estate broker or appraiser, or by determination of the fair market value established by that county's assessor, multiplied by the appropriate "common level ration".
 - (2) For realty located in Pennsylvania counties other than Wyoming or Sullivan, by written appraisal of a licensed real estate broker or appraiser.

RULE 4007. BAIL SURETY

- (a) When real estate is posted as surety for bail in any criminal proceeding, and the said real estate is located within Wyoming or Sullivan County, the Clerk of Courts shall cause judgment to be entered and indexed against the said surety or sureties, and in favor of the Commonwealth of Pennsylvania, to the use of the County of Wyoming or the County of Sullivan, as the case may be, in the amount of said surety. Upon termination of the criminal proceeding, or upon exoneration of the surety, the Clerk of Court shall make the said judgment satisfied of record. There shall be no additional cost for the entry or satisfaction of such judgment.

**RULES OF THE ORPHANS' COURT OF
FORTY-FOURTH DISTRICT**

RULE 1. GENERAL RULES

(a) Statement of Purpose:

These rules are intended to supplement, and to apply in conjunction with, the Orphans' Court Rules as promulgated by the Supreme Court of Pennsylvania, and the Probate, Estates and Fiduciaries Code of the Commonwealth of Pennsylvania.

(b) Incorporation by Reference:

Except as otherwise provided by the Supreme Court, an Act of Assembly, or by general rule or special order of the Orphans' Court Division, the Rules of the Civil Division of the Court of Common Pleas of the 44th Judicial District, which by their terms purport to apply and are intended to apply to the Orphans' Court Division are herein incorporated by reference.

(c) Counsel of Record:

- (1) An attorney who has appeared in a case shall be regarded as counsel of record, whether such appearance is in writing or in person at any open court proceeding.
- (2) An attorney may withdraw his appearance for a part (i) if such withdrawal is accompanied by a written approval of the party and an address of the party and an address of the party where subsequent pleadings may be served, or (ii), if such withdrawal is consented to by the party and another attorney enters his appearance for the party at the same time.
- (3) In all other cases, court approval is necessary for withdrawal of an appearance, which shall be by petition for a rule on the withdrawing attorney's client.
- (4) Hearing or argument procedures on a petition for withdrawal shall be in accordance with Local Rule of Civil Procedure 205.1.

(d) Justification of Surety:

Where an individual surety is used on a bond, a justification of the surety shall be filed with the court, the Clerk of Courts or the Register, as the case may be, in the following form before the bond is approved:

“COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF _____: SS.

_____, being about to become surety/sureties in the above entitled matter being duly sworn according to law deposes and says:

1. I/We reside at _____ in _____ Township or Borough in _____ County, Pennsylvania.
2. My/Our occupation is _____.
3. I am/we are the owner(s) of real estate in the County of _____, located in _____ Township or Borough, near or at _____, described as follows: _____.
4. I/We acquired title to said real estate by _____ recorded in deed book _____ page _____ and my/our title to said real estate is in fee simple solely in the undersigned and not subject to any trust.
5. Encumbrances against said real estate are: _____ and such constitute the only encumbrances against the same.
6. The said real estate is assessed for taxes for the year 20____, at the sum of \$ _____, and in my/our opinion the fair market value of the said real estate is \$ _____.
7. I am/we are not surety/sureties in any other case, or for any public officer except: _____.

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

Notary Public

(e) Stated Days for Holding Sessions of Orphans’ Court Division:

- (1) The annual court calendar shall state times at which accounts for confirmation and approval.
- (2) Other process may be made returnable to the days of miscellaneous court, as established by the annual court calendar.

(f) Definitions

(1) Fiduciaries to whom these rules apply include personal representatives, trustees, guardians of minors or incompetents, and custodians under the Uniform Gifts to Minors Act.

(2) Other definitions:

- i. “Clerk” means the Clerk of the Orphans’ Court Division of the Court of Common Pleas.
- ii. “Court” means the Orphans’ Court Division of the appropriate branch of the Court of Common Pleas, or the judge thereof.
- iii. “Register” means the Register of Wills.
- iv. “Exception” means a formal, written disagreement with an appraisal or with the report of an auditor or master appointed by the court; or with an adjudication, opinion or decree of the court.
- v. “Objection” means a written disagreement with any matter other than that which is covered by an exception
- f. “PEF Code” means Probate, Estate and Fiduciaries Code of the Commonwealth of Pennsylvania, as the same may be amended from time to time.

(e) Short Form of Citation

(1) These rules may be cited as “44th Jud. Dist. Rules – OC”.

RULE 2. PLEADING AND PRACTICE

(a) All adversary matters initiated by petition or motion will be deemed at issue on the return day fixed in the citation or order awarded or issued upon court presentation of the petition or motion. Said return day, except for cause shown and allowed, shall be on the next day of miscellaneous court occurring not less than thirty (30) days after the date of the citation or order.

(If no statement of proposed distribution is filed, the notice shall contain a brief statement of the reasons.)

The same will be presented for confirmation to the Court of Common Pleas of the 44th Judicial District of Pennsylvania _____ County Branch, Orphans' Court Division, on the _____ day of _____, 20____, at _____ o'clock, and any objection must be filed prior thereto.

(Attorney or Counsel of Record)"

- (2) Notices shall be sent to parties in interest, together with counsel of record, as defined by the Orphans' Court Rules of the Supreme Court, by ordinary mail, sent to the last known addresses of such parties in interest, not less than twenty (20) days prior to the date for presentation for confirmation.
 - (3) Proof of service of the notice herein required, together with all other notices required by applicable sections of these rules, the PEF Code, and the Orphans' Court Rules of the Supreme Court, shall be by affidavit filed with the Clerk prior to the date and time for presentation for confirmation.
- (c) Guardians or Trustees ad Litem
- (1) An application to the court to appoint a guardian to trustee ad litem under Section 3504 of the PEF Code shall be made by separate petition filed and presented before the filing of an account.
 - (2) An application of the court to dispense with the appointment of a trustee or guardian ad litem under Section 3504 of the PEF Code shall be made by an addendum to the account containing the reasons for such application.
- (d) Advertisement of Accounts
- (1) The Clerk shall give notice by advertisement of the date and time when accounts filed in the offices of the Register or clerk will be presented for confirmation, stating in the advertisement the name of the estate, and the names and capacities of the accountants.
 - (2) Such advertisement shall be published in at least one (1) newspaper of general circulation published within the county of filing as follows:

- a. Accounts of Personal Representatives – once a week during the four (4) weeks immediately preceding the date and time of presentation for confirmation.
 - b. Accounts filed with the Clerk – once a week during the two (2) weeks immediately preceding the date and time of presentation for confirmation.
- (e) Statement of Proposed Distribution
- (1) The statement of proposed distribution shall accompany, but be bound separately from the account to which it pertains and shall be filed in the same office as the account.
 - (2) The statement of proposed distribution shall contain the names of the distributees to whom it is proposed to award the balance for distribution, as disclosed by the account, the dollar amount and fractional share, if applicable, awarded to each, and a brief statement of the reasons therefore.
 - (3) If an accountant, for any reason, is unable to file a statement of proposed distribution, an explanation of the reasons therefore shall accompany the account.
 - (4) Where the proposed distribution depends in any manner on a will or other instrument, a plain copy thereof must be attached to the statement.
 - (5) If distribution of real property is proposed, a legal description, together with record reference, must accompany the statement.
 - (6) If distribution in kind is proposed, consents of the distributees must accompany the statement.
 - (7) If the proposed distribution is the subject of a dispute, or if it involves any fairly disputable questions known to or reasonably ascertainable by the accountant, the accountant shall include in the statement, an explanation of the dispute or fairly disputable questions, together with a statement of the position taken by the accountant to justify the proposed distribution.
 - (8) The statement of a personal representative (or the account if no statement is filed) must include an inheritance and additional estate tax explanation, including the fact of payment, accompanied by copies of receipts, and a reference to any dispute or adverse claim of the Department of Revenue.

- (9) Proofs of any additional reports, notices, or filings as required by the Orphans' Court Rules of the Supreme Court or the PEF Code, other than specifically mentioned in these rules, shall be the subject of an appropriate affidavit attached to the statement of proposed distribution (or the account if no statement is filed).
- (f) Objections
- (1) All objections to an account and/or statement of proposed distribution shall be in writing.
 - (2) All objections must be filed in the Office of the Clerk, with a copy thereof submitted simultaneously to the court, before the day and time fixed for presentation for confirmation; otherwise, such objections will not be heard and the account may be confirmed absolutely and a decree or adjudication may be made directing distribution in accordance with the statement of proposed distribution or as otherwise directed by the court.
 - (3) A copy of all objections shall be served on the accountant and his record counsel.
 - (4) Hearing or argument procedures shall be in accordance with Local Rule of Civil Procedure 205.1.
- (g) Confirmation
- (1) If no objections are filed to either the account or the statement of proposed distribution, the court may, on the day fixed for presentation for confirmation, make a final decree confirming the account absolute and directing the distribution in accordance with the statement.
- (h) Exceptions
- (1) Exceptions shall be in writing, filed in the Office of the Clerk, with a copy thereof simultaneously submitted to the court, on or before seven (7) days after the date of confirmation of the account statement of proposed distribution. The same shall be promptly served upon the parties in interest or record counsel, personally or by ordinary mail
 - (2) Hearing or argument procedure shall be in accordance with Local Rule of Civil Procedure 205.1.

(i) Form of Account

- (1) Accounts shall be in such form as shall be prescribed from time to time, by the Supreme Court of Pennsylvania.

RULE 8 AUDITORS AND MASTERS

- (a) The court, on its own motion or on motion of a party in interest, may appoint an auditor or master in any case or matter wherein, in the discretion of the court, such appointment is deemed available.
- (b) In the event of the appointment of an auditor or master, the court may, by special order, establish rules of conduct concerning the procedures before such appointee, in all areas allowed to be prescribed by Local Rules.

RULE 12 SPECIAL PETITIONS

(a) Family Exemption

- (1) Procedure shall be by petition presented to the court.
- (2) All areas of prescription by Local Rules shall be the subject of a special order of court in each case.

(b) Small Estates Under PEF Code

- (1) Procedure shall be presented to the court which shall set forth the following:
- a. The petition shall set forth facts establishing a prima facie right of settlement under Section 3102 including inter alia, the following:
1. the name and address of the petitioner, his family relationship to the decedent, in any, and if none, the capacity in which he brings the petition.
 2. the name, date and place of death of the decedent and his domicile.
 3. If letters, either testamentary or of administration, were granted, detailed statement as to status thereof.
 4. The names, relationships and a brief description of the interest of all persons entitled to share in the

decedent's estate under the will or intestate laws, stating which are minors, incompetent or deceased, with the names of the fiduciaries.

5. The person, if any, entitled to a family exemption and the facts on which their claim is based.
 6. An itemized list of the real and personal property of the decedent and the fair value of each item thereof as of the date of the decedent's death as determined by the petitioner, or in lieu thereof, a copy of the inventory and appraisal if previously filed, and a statement of the net proceeds of each item converted into cash.
 7. An itemized list showing disbursements made out of the decedent's assets, the date of payment, the payee and the nature and amount of payment.
 8. The names and addresses of unpaid creditors of the decedent of whom the petitioner has knowledge, with the nature and amount of each claim and whether the same are admitted or disputed.
 9. A statement regarding Pennsylvania Inheritance and Estate Taxes, its calculation and the amount paid thereof.
 10. A proposal for distribution setting forth:
 - (i) how creditors, if any, shall be paid.
 - (ii) the names of persons to share in the distribution and the share each will receive.
- b. As the court may direct, the petition for settlement and distribution of a small estate may be confirmed absolutely without any notice or may be confirmed absolutely upon at least ten (10) days written notice of presentation having been given to all known persons in interest of may be confirmed nisi, with absolute confirmation in thirty (30) days, subject to such notice as the court, by special order, may direct, which notice may either be by publication or by mailing ten (10) days written notice by ordinary mail to all known persons in interest.

- c. If notice is required, final confirmation shall not be effective, unless and until the attorney for the petitioner shall file the appropriate proof of publication or affidavit of service.
 - d. Exhibits: The following exhibits shall be attached to the petition, in addition to the above:
 - 1. if decedent died testate, a copy of decedent's will.
 - 2. consents of the surety, unpaid beneficiaries, heirs and claimants who consent thereto.
- c) Surviving Spouse's Allowance
- (1) Procedure shall be by petition presented to the court.
 - (2) Hearing or argument procedures, if applicable, shall be in accordance with Local Rule of Civil Procedure 205.1.
- (d) Surviving Spouse's Election
- (1) Petition for extension of time shall be in accordance with these Rules [See Pleading and Practice, Paragraphs (a) and (b)].
- (e) Minors' Estates and Appointment of Guardians and Trustees
- (1) If a minor is over the age of fourteen (14) years, he shall appear in person at the time of presentation of any petition for appointment of a guardian and indicate his selection of a guardian, unless his presence is specifically excused by the court.
 - (2) Consent of any proposed guardian must be attached to the petition for appointment of a guardian and shall contain the following statements:
 - a. his business and domicile.
 - b. that he is a citizen of the United States, able to speak, read and write the English language.
 - c. that is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a fiduciary; that he has no interest adverse to the minor.

- d. when the proposed guardian is a corporate fiduciary, its written consent to act as such shall contain a statement that it is not the fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary, and that it has no interest adverse to the minor.