

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY

IN RE: Amendments to the Lycoming County  
Orphans' Court Rules

ORDER

AND NOW, this 27<sup>th</sup> day of March, 2008, it is hereby ORDERED

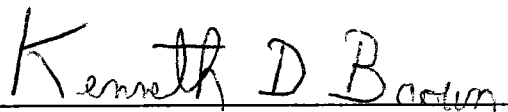
FILED  
LYCOMING COUNTY  
2008 APR - 3 P 9:52  
ANNABEL MILLER  
RECORDER OF DEEDS

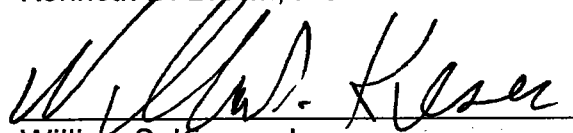
AND DIRECTED as follows:

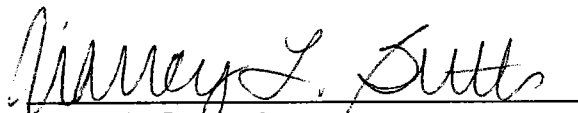
1. Lycoming County Orphans' Court Rules L5.7, L6.13, L10.1, L17.1, L17.8, L17.12 and L17.13 are hereby rescinded.
2. Lycoming County Orphans' Court Rules L6.1, L6.9, L17.4 and 17.9 are revised as indicated in the attachment. (*Italics is new language; ~~strikeout is removed language.~~*)
3. Lycoming County Orphans' Court Rules L14.1, L17.10 and L17.11 are hereby replaced in their entirety with identically numbered rules, that are set forth in the attachment.
4. The Clerk of the Orphans' Court is directed to:
  - a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.
  - b. Forward two (2) certified copies of this order, and a disk containing the text of the local rule, to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
  - c. Forward one (1) certified copy of this order to the Pennsylvania Orphans' Court Procedural Rules Committee.

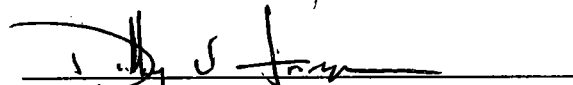
- d. Forward one (1) copy of this order to the Lycoming Reporter for publication therein.
  - e. Forward one (1) copy to the chairman of the Lycoming County Customs and Rules Committee.
  - f. Keep continuously available for public inspection copies of this order.
5. The rule revisions approved by this order shall become effective 30 days after publication in the Pennsylvania Bulletin.


BY THE COURT,

  
\_\_\_\_\_  
Kenneth D. Brown, P.J.

  
\_\_\_\_\_  
William S. Kieser, J.

  
\_\_\_\_\_  
Nancy L. Butts, J.

  
\_\_\_\_\_  
Dudley N. Anderson, J.

  
\_\_\_\_\_  
Richard A. Gray, J.

cc: Mary Weber, Esq

## ACCOUNTS AND DISTRIBUTION

**L6.1. Form of Account.** *In addition to the requisites of the form of account of Pa. O.C. Rule 6.1, to facilitate preparation, the accountant may prefer to detail the starting balance by attaching a copy of the inventory as an exhibit. (This would be inappropriate if the inventory is prepared in a form that includes substantial extraneous material or does not list assets in an orderly manner.) The opening entry would then read:*

*"Assets Listed in Inventory per copy attached" (insert amount)*

~~A. In addition to the requisites of the form of the account of Pa.O.C. Rule 6.1, the account shall contain, at the beginning of the disbursement section, a subsection under the heading "ATTORNEY'S AND FIDUCIARY'S FEES, COMMISSIONS AND EXPENSES" which shall indicate separately the total amount of all disbursements which have been made for the purpose of paying attorney's fees and expenses and the total amount of all disbursements which have been made for the purpose of paying the fiduciary's fees or commissions and which have been made for the purpose of paying the fiduciary's expenses. This subsection shall be substantially in the form prescribed by Lyc. Co. O.C.R. L17.1:~~

~~————— **B. Ledgers and Printouts.** Accountant's copies of ledgers and printouts may be used to state an account, if they are legible. If these contain abbreviations, code numbers or symbols, such abbreviations, code numbers and symbols shall be explained.~~

~~————— C. The periodic account required of an appointed guardian of the estate of an incapacitated person shall be substantially in the form prescribed by Lyc. Co. O.C.R. No. L17.13.~~

**L6.9. Statement of Proposed Distribution.**

A. Every fiduciary filing an account in which a distribution has been or is to be made shall file with the clerk a *verified* statement of proposed distribution substantially in the form prescribed by Lyc. Co. O.C.R. L17.4. When real estate is to be distributed, the description of said real estate shall be by metes and bounds when such a description is available.

B. When the fiduciary who files the account does not file a statement of proposed distribution, he or she shall request the appointment of an auditor. This request shall be by motion and shall be filed at the same time the account is filed. The court shall appoint an auditor to resolve issues of law and fact and to propose a distribution of the assets of the estate.

C. Notice of the filing of the statement of proposed distribution or the request for appointment of an auditor shall be given as prescribed by Lyc. Co. O.C.R. L6.3.

## **ESTATES OF INCAPACITATED PERSONS**

### **L14.1. Incapacitated Persons**

**A.** Notice in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person is required on all persons who are sui juris and are heirs of the alleged or adjudicated incapacitated person, as defined by the intestacy laws of Pennsylvania. Such notice is required even if the person does not reside within the Commonwealth of Pennsylvania.

**B.** Notice required in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person, other than notice upon the alleged or adjudicated incapacitated person, shall be by personal service, by service in such manner as the court directs and/or as directed by statute in that particular case; or may be made by first class mail, postage prepaid, to the known or last known address. In the latter case, a certificate of service shall be prepared and filed verifying that the address used is the proper known or last known address, and attaching a postal service certificate of mailing.

**C. Notice and Service.** The petition shall include a notice and citation as prescribed by the Pennsylvania Orphans' Court Rules. Petitioner shall be responsible for obtaining a completed notice and citation from the clerk, and petitioner shall be responsible for proper service of the petition, notice and citation. In all cases, service of the petition, notice and citation shall be made upon the alleged or adjudicated incapacitated person by personal service by the sheriff or by any other competent adult, and the person making such service shall read to the alleged or adjudicated incapacitated person the petition, notice and citation, and then for a second time the notice and citation. The person making service shall explain the contents to the extent possible.

**D. Service of emergency guardianship petition.**

(1) Service of emergency guardianship petition on incapacitated person. Petitioner shall serve the emergency guardianship petition in person on the alleged incapacitated person at least 48 hours prior to the emergency hearing and within 48 hours of the hearing date and time being scheduled. In the event there is not 48 hours between the time the hearing is scheduled and the hearing date and time, petitioner shall serve the emergency guardianship petition in person on the alleged incapacitated person within a reasonable amount of time prior to the emergency guardianship hearing. What is a reasonable amount of time shall depend upon the circumstances, such as the amount of time that exists between the time the hearing is scheduled and the actual hearing date. It shall be in the court's discretion to determine the timeliness of the service. Petitioner must offer evidence via affidavit and be prepared to present testimony to prove the reasonableness of the service.

(2) Service of emergency guardianship petition on sui juris, agents under a power of attorney, residential service providers, and other service providers. Petitioner shall serve the emergency guardianship petition on all persons who are sui juris and

would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time (even if the person does not reside within the Commonwealth of Pennsylvania), on the agents under the alleged incapacitated person's power of attorney, on the person or institution providing residential services to the alleged incapacitated person, and on such other parties as the court may direct, including other service providers, in any reasonable manner and within a reasonable amount of time prior to the emergency guardianship hearing. Any reasonable manner shall include service in person or by telephone, facsimile, mail, or electronic transmission depending upon the circumstances. However, service by telephone alone shall not be the favored method and shall be used only in circumstances where the other methods of service would not be timely. What is a reasonable amount of time shall depend upon the circumstances, such as the amount of time that exists between the time the hearing is scheduled and the actual hearing date. It shall be in the court's discretion to determine if the manner and timeliness of the service were reasonable. Petitioner must offer evidence via affidavit and be prepared to present testimony to prove that the manner and timeliness of the service were reasonable.

**E. Return of Service.** Petitioner is responsible for filing a return of service conforming to Pa.R.C.P. No. 405, which also confirms that the contents of the notice and citation of the petition were read and, to the extent possible, explained, to the respondent as set forth in paragraph C, above.

**F. Petition.** A petition for adjudication of incapacity and/or for appointment of a guardian of the estate of the person shall be substantially in the form prescribed by Lyc. Co. O.C.R. L17.9, and shall contain all the items of information referred to therein. Language used in the petition should be easily understood. It is recommended that an affidavit of a physician or clinical psychologist be attached which contains a description of the physical and mental condition, any functional limitations and whether or not the respondent would be harmed by attendance at the proceeding to determine incapacity.

**G. Status report on legal representation.** At least 14 days prior to the date established for hearing on the petition, petitioner shall file in duplicate a status report on legal representation, in substantially the form prescribed by Lyc. Co. O.C.R. L17.10, each of which should have attached, under the proper caption, the appropriate order, in substantially the form prescribed by Lyc. Co. O.C.R. L17.11.

**H. Proposed findings of fact.** Petitioner shall provide to the court, at or before hearing, proposed findings of fact in a form suitable for adoption by the court at hearing. Such findings shall include, inter alia, in separately numbered statements, at least the facts petitioner intends to establish which are required in order for the court to grant the relief requested.

**I. Periodic report of the guardian of the person.** Within one year of the date of

appointment and annually thereafter, or with such greater frequency as the court may direct, every guardian of the person of an incapacitated person shall file a periodic report of the guardian of the person in substantially the form prescribed by the Pennsylvania Orphans' Court Rules. Notice and service of said report shall be in such manner as the court shall direct.

J. **Periodic report of the guardian of the estate.** Within one year of the date of appointment and annually thereafter, or with such greater frequency as the court may direct, every guardian of the estate of an incapacitated person shall file a periodic report of the guardian of the estate in substantially the form prescribed by the Pennsylvania Orphans' Court Rules. Notice and service of said report shall be in such manner as the court shall direct.

K. **Filing of emergency guardianship petition.** In all cases where an emergency guardianship petition is filed, a plenary petition shall be filed at the same time. Additionally, with the filing of the emergency and plenary petitions, petitioner shall file a motion cover sheet in accordance with Lyc. Co. O.C.R. L3.4. The motion cover sheet shall include within the order a rule to show cause as to why the alleged incapacitated person shall not be adjudicated capacitated. Petitioner shall serve the executed motion cover sheet on the alleged incapacitated person, counsel for the alleged incapacitated person, all persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time (even if the person does not reside within the Commonwealth of Pennsylvania), on the agents under the alleged incapacitated person's power of attorney, on the person or institution providing residential services to the alleged incapacitated person, and on such other parties as the court may direct, including other service providers. In the event petitioner determines that the plenary petition is not necessary, petitioner shall file a verified statement explaining the reason for the lack of necessity of the plenary guardianship. The verified statement shall be substantially in the following form:

IN THE MATTER OF  
\_\_\_\_\_,  
an alleged incapacitated  
person

) IN THE COURT OF COMMON PLEAS OF  
) LYCOMING COUNTY, PENNSYLVANIA  
)  
) ORPHANS' COURT DIVISION  
)  
) NO. \_\_\_\_\_

**STATEMENT EXPLAINING REASON FOR LACK OF NECESSITY OF PLENARY GUARDIANSHIP**

I, \_\_\_\_\_, petitioner/counsel for petitioner in the above-referenced matter, hereby state, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that a plenary guardianship is not necessary for the following reason(s):

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Respectfully submitted,  
Petitioner/Counsel for Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_

[address]  
[telephone number]



**L17.4. Statement of Proposed Distribution.** The statement of proposed distribution required by Lyc. Co. O.C.R. L6.9 shall be substantially in the following form:

IN RE ESTATE OF: \_\_\_\_\_ : IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
: \_\_\_\_\_  
Deceased : ORPHAN'S COURT DIVISION  
: \_\_\_\_\_  
: DOCKET NUMBER:

**STATEMENT OF PROPOSED DISTRIBUTION**  
**OF THE ESTATE OF \_\_\_\_\_**

filed by:

\_\_\_\_\_  
Fiduciary

\_\_\_\_\_  
Capacity

1. Date of death.
2. Indicate whether the decedent died testate or intestate and the date of probate of the decedent's last will and testament (if any).
3. Date of appointment of executor or administrator.
4. Set forth the name and address of the decedent's spouse.
  - (a) Indicate whether the spouse has elected to take against the will and if so, the date of the filing of the election:
  - (b) Indicate whether the decedent married after the execution of the will or codicils (if any) and which of the said will or codicils was executed prior to the marriage:
5. Set forth the names and addresses of the decedent's surviving issue or adopted children and indicate if any of them were born or adopted after the execution of the will (if any):
6. Set forth in list form the names of all legatees or in the case of an intestacy or partial intestacy, the names of the heirs at law and the addresses of the legatees and heirs (if not previously disclosed in 4 and 5 above). Also, set forth the relationship of the legatees or heirs to the decedent, the amount or percentage of the interest and the character of the interest. This information may be in summary form but should indicate whether any of the devises and bequests have been revoked, adeemed, lapsed or been assigned, attached or disclaimed:
7. Set forth the names of all parties in interest who are under any legal disability and the names and addresses of their guardians or committees and the circumstances of the disability:
8. Set forth the names and addresses of unpaid creditors from whom the fiduciary has received written notice or of whom the fiduciary has actual notice. Also, set forth which of the amounts claimed are admitted:
9. Indicate whether or not charitable bequests are involved and if so, whether the Attorney General has been served with notice:

10. List any fiduciary capacity which the decedent held and indicate the present status and court docket number (if any):

11. Indicate whether the Pennsylvania transfer, inheritance and estate taxes have been paid in full. If so, in lieu of completing the schedule below a copy of notice of filing of appraisalment may be attached:

(a) State the Pennsylvania Department of Revenue appraisalment value of the estate, the amount of the debts and deductions allowed by the register of wills, and the value of the taxable estate:

Appraisalment Value \_\_\_\_\_

Less Debts and Deductions \_\_\_\_\_

Taxable Estate \_\_\_\_\_

(b) State the tax rate and the total amount of tax paid:

Tax Rate \_\_\_\_\_%

Tax Paid \_\_\_\_\_

12. Indicate whether the estate is subject to the federal estate tax and the date of receipt of a federal estate tax closing letter (if it has been received). If the letter has not been received indicate that to the personal representative's information, knowledge and belief the federal estate taxes have been paid in full in accordance with the return filed:

13. Where the accountant is requesting that an issue be decided by an auditor or by the court, set forth any such issues:

14. Indicate whether a reserve is requested and, if so, state the amount and purpose thereof:

**The accountants propose to distribute the assets as follows:**

Name of Distributee	Asset to be Distributed	Inventory Value	Tax Basis Value

**Total Distribution Value** \_\_\_\_\_

\_\_\_\_\_  
(Accountant)

\_\_\_\_\_  
(Accountant)

IN RE ESTATE OF:

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

\_\_\_\_\_  
Deceased

:  
: ORPHAN'S COURT DIVISION  
:  
: DOCKET NUMBER:

**AFFIDAVIT OF INDIVIDUAL FIDUCIARY(IES)**

\_\_\_\_\_, the within named fiduciary(ies) verify(ies) that the facts set forth in the foregoing account and statement of proposed distribution, which are within the personal knowledge of the fiduciary(ies), are true, and as to facts based on information of the others, the fiduciary(ies), after diligent inquiry, believe(s) them to be true. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
\_\_\_\_\_  
Signature(s) of Individual  
Fiduciary(ies)

Date: \_\_\_\_\_

\* \* \* \* \*

IN RE ESTATE OF:

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

\_\_\_\_\_  
Deceased

:  
: ORPHAN'S COURT DIVISION  
:  
: DOCKET NUMBER:

**AFFIDAVIT OF OFFICER OF CORPORATE FIDUCIARY**

\_\_\_\_\_ verifies that he is the \_\_\_\_\_ of the above-named \_\_\_\_\_, and that the facts set forth in the foregoing account and statement of proposed distribution which are within the personal knowledge of the affiant are true, and as to facts based on the information of others, the affiant, after diligent inquiry, believes them to be true. I understand that false statements therein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Officer of  
Corporate Fiduciary

Date: \_\_\_\_\_

**NOTE:** The statement of proposed distribution is to be verified using the forms set forth in the Pennsylvania Orphans' Court Rules.

IN RE ESTATE OF:

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

\_\_\_\_\_

Deceased

: ORPHAN'S COURT DIVISION

: DOCKET NUMBER:

**AFFIDAVIT VERIFICATION OF NOTICE**

\_\_\_\_\_(Fiduciary)\_\_\_\_\_, \_\_\_\_\_(Capacity)\_\_\_\_\_ of the Estate of \_\_\_\_\_, verifies that written notice by \_\_\_\_\_(state method of service of notice)\_\_\_\_\_ was given of the filing of the [Account and Statement of Proposed Distribution/Account and Request for the Appointment of an Auditor] to every unpaid claimant who has given written notice of his claim to the accountant and to every person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir or next of kin. Copies of said written notices are attached. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Fiduciary or Officer of  
Corporate Fiduciary

Date: \_\_\_\_\_

**L17.9. The Petition to Adjudicate Incapacity and for the Appointment of a Guardian.** The petition to adjudicate incapacity and for the appointment of a guardian referred to in Lyc. Co. O.C.R. L14.1A- F shall be substantially in the following form: **[The form is unchanged.]**

**L17.10.** The status report on legal representation referred to in Lyc. Co. O.C.R. L14.1G shall be substantially in the following form:

IN THE MATTER OF \_\_\_\_\_ ) IN THE COURT OF COMMON PLEAS OF  
an alleged incapacitated ) LYCOMING COUNTY, PENNSYLVANIA  
person )  
 ) ORPHANS' COURT DIVISION  
 )  
 ) NO. \_\_\_\_\_

STATUS OF ALLEGED INCAPACITATED PERSON'S LEGAL REPRESENTATION

1. The Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate in the above-referenced matter was filed with this Honorable Court on \_\_\_\_\_ [date] *(or is being filed herewith)*.
2. Service of the Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate was served on the alleged incapacitated person on \_\_\_\_\_ [date] *(or has not been served to date)*.
3. The Hearing on the Petition to Adjudicate Incapacity and for the Appointment of a Plenary Guardian of the Person and the Estate has been scheduled for \_\_\_\_\_ [date] *(or has not been scheduled yet)*.
4. Counsel for the alleged incapacitated person *(is) (is believed to be)*: [name, address, and telephone number] **or** Petitioner does not believe that the alleged incapacitated person is represented by counsel.
5. According to Petitioner's knowledge and belief, the assets of the alleged incapacitated person consist of approximately \$\_\_\_\_\_.
6. Petitioner requests that counsel for the alleged incapacitated person be appointed by this Honorable Court and pursuant to 20 Pa.C.S. § 5511(c), be compensated by Lycoming County **or** Petitioner requests that counsel for the alleged incapacitated person be appointed by this Honorable Court and that counsel for the alleged incapacitated person not be compensated by Lycoming County.

Respectfully submitted,

Petitioner/Counsel for Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
[address]  
[telephone number]

**L17.11.** The proposed order referred to in Lyc. Co. O.C.R. L14.1G shall be substantially in the following form:

IN THE MATTER OF \_\_\_\_\_,  
an alleged incapacitated  
person

) IN THE COURT OF COMMON PLEAS OF  
) LYCOMING COUNTY, PENNSYLVANIA  
)  
) ORPHANS' COURT DIVISION  
)  
) NO. \_\_\_\_\_

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of the attached status report, \_\_\_\_\_ is hereby appointed as counsel for the alleged incapacitated person. Counsel for the alleged incapacitated person \_\_\_\_\_ *shall*/ \_\_\_\_\_ *shall not* be compensated by Lycoming County. A certified copy of this order shall be served on the alleged incapacitated person, counsel for the alleged incapacitated person, and all persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time.

BY THE COURT:

\_\_\_\_\_  
J.